e-COMMERCE & ASSESSMENT/APPRAISAL

NJLM CONFERENCE

Association of Municipal Appraisers

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E-COMMERCE AND ASSESSMENT/APPRAISAL

I. MARKET OVERVIEW

1. Pre-COVID-19 Trends

- Increasing consumer use of e-Commerce
- Decreasing brick and mortar retail sales
- Increasing retail vacancies
- Increasing retail tenant bankruptcies and failures
- Thinning herd of retail tenants
- Significantly decreased retail development
- Increasing demand for new distribution warehouses
- Old industrial building stock not suitable for e-Commerce which requires large open floor plans, high ceiling heights, and vastly increased trailer and car parking
- Increased demand spurs increased industrial development
- Lack of developable land drives redevelopment of contaminated land and abandoned industrial sites that were previously too expensive to redevelop
- Lack of land also causes the geographic footprint of markets to expand to new, remote areas that previously were non-viable areas for development (Expansion from NJTP Exit 8A/7A to Delaware border and beginning of development along I-78 corridor)
- Lack of supply causes increased industrial rent growth for all classes of industrial real estate
- Industrial real estate vacancies decrease substantially
- Industrial real estate is among favored classes for real estate investors

2. Effects of COVID-19 Pandemic and Current Market Conditions

- Consumer shift to e-Commerce greatly increases as traditional retail establishments are closed due to the pandemic
- Retail tenant failures increase, but are tempered somewhat by artificial market forces such as eviction moratoriums, and governmental subsidies
- Retail real estate demand collapses and many owners face catastrophic financial consequences, which again are mitigated by governmental assistance and lender forbearance and extension of the term of mortgages
- Demand for new, modern industrial and warehouse distribution space vastly accelerates to accommodate the increased e-Commerce demand
- Supply chain disruption experience forces many industrial/retail/e-Commerce tenants to reorganize their supply chain models from just-in-time to more robust and resilient models, further increasing demand for warehouse space
- Revamped business models shift to nearshoring and on-shoring which drive demand for industrial real estate even higher

- Constrained supply of available industrial space leads to significant and accelerated increases in rent
- Already low market vacancy decreases to essentially 0% for modern buildings
- Increasing demand and growing rents attract even greater investment in the industrial real estate sector
- Industrial real estate is the favored class for real estate investment and the amount of new capital for investment in the sector coupled with greatly constrained supply drives both existing building and developable land prices to historic highs
- Government fiscal policy keeps borrowing costs at historic lows, further fanning growth and appreciation in the sector
- Record demand, rapid rent growth, and the availability of cheap capital erodes traditional under-writing standards
- Many new players have entered the industrial market and established industrial developers travel beyond their traditional geographic markets to pursue new opportunities in the hottest, most sought after industrial markets that are mostly port-centered
- Cap. Rates are at all-time low, approaching 3% (at or below financing rates) for high quality, stabilized assets
    - But cap. rates are somewhat misleading as the current market is trading not on current cash flows, but on future appreciation
    - Target returns of Merchant Builders, REITS, and Private Equity Funds are all substantially higher than current cap. rates, demonstrating significant asset appreciation is baked into current transactions
- Marketing times are extremely low
- In most cases, if properties are "marketed," traditional industrial players are "priced out" and new players are often the successful buyers
- Established industrial players in the market are almost exclusively pursuing "off-market" opportunities for both buildings and land
- Inflation has become of major concern, and more specifically the sharply increasing cost of building materials is having a significant effect on returns and the decision-making of market participants

II. CORE PRINCIPLE OF PROPERTY TAX ASSESSMENT - STABILIZATION

1. For tax assessment purposes, valuations must have some permanency rendering it secure against temporary conditions such as inflation or deflation. Glenpointe Assocs. v. Teaneck Tp., 10 N.J. Tax 288, 299 (Tax 1988).

2. Changed economic circumstances don't necessarily justify and increase or decrease in assessment. Hackensack Water Co. v. Div. of Tax Appeals, 2 N.J. 157, 163 (1949).

3. Stabilized occupancy or income is defined as occupancy or income at that point in time when abnormalities in supply and demand or any additional transitory conditions cease to exist and the existing conditions are those expected to continue over the economic life of the property. Prudential Ins. Co. of America v. Parsippany-Troy Hills Tp., 16 N.J. Tax 58, 63-64 (Tax. 1995)(Disregards income from "bottoming out" of hotel market).

4. Stabilization requires elimination of abnormalities or any additional transitory conditions from stated income or expenses to reflect conditions that are expected to continue over the economic life of the property. Green Eagle Property Resources LP v. Mansfield Tp., 2021 WL 4167094 at 15 (Tax 2021) (citing First Republic Corp. of America, 16 N.J. 568, Tax 579 (Tax 1997)).

5. True value must be fairly constant and gauged by conditions, not temporary or extraordinary, but by those which over a period of time will be regarded as measurably stable. TD Bank v. City of Hackensack, 28 N.J. Tax 363, 392-93 (Tax 2015)(Noting sharp national economic downturn staring 2007-2008 but rejecting adjustment for market conditions to bank branches due to lack of credible market data in the record).

6. The strong public interest in assessment stability, and its corollary, stable predictable municipal revenues, requires that tax assessment not be hostage to sharp fluctuations traceable to volatile swings in the financial markets. Inwood at Great Notch v. Little Falls Tp., 6, N.J. Tax 316, 332 (Tax 1984).

III. OBSERVATIONS AND CONCLUSIONS

1. Market is at historic highs in terms of rent, occupancy, demand, asset prices and land prices.

2. Historic signs of a real estate bubble
    - Prices increase at or faster than rents
    - Rates of return associated with a property type and the economic characteristics of tenants or users are not typical and tend to be very low.
    - Very low cap. rates, for example, are often a sign of speculation
    - Rates of return decrease below long-term trends
    - Traditional buyer are replaced by new ones. "Everyone" starts to invest in the real estate class
    - Number of transactions increases
    - Marketing times are shorter
    - Average days on market decrease

- Number of persons employed in the real estate sector increases significantly
- Rents increase faster than the ability of tenants to pay
- Sales prices are beyond the affordability of users

The Appraisal of Real Estate, 15th edition, Appraisal Institute, p. 117 (2020).

3. Data points to height of market and a potential industrial real estate bubble based on historic criteria and risk factors.
    - Industrial asset sales prices are at all-time highs
    - Industrial land prices also at all-time highs
    - Occupancy effectively 100% for new, e-Commerce oriented industrial buildings
    - Cap. rates are at all-time lows, well below historic levels
    - There are many new players in the industrial real estate market
    - Established market participants are cautious and unlikely to purchase "on-market" properties

4. Given that all signs point to height of the market/real estate bubble for industrial real estate, how to you assess such properties?
    - Fundamental concern of stabilization militates against setting assessments commensurate with height of the market
    - Current income, occupancy and expense data should be compared to historic data and stabilized before use in assessing via the Income Approach to Value
    - Cap. rate data should be similarly tempered by comparison to historical data and long-time trends
    - Current sales prices should probably not be given primary reliance in the valuation analysis
    - Nevertheless, market values and assessed values inevitably are trending upward
    - Substantially increased assessments and resulting real estate taxes may have a significant negative effect on rent and could depress rents or at the very least substantially mitigate the rate of rent appreciation
    - Consideration should be given to uniformity of assessments, especially with respect to initial assessments of new industrial properties as compared to existing buildings
    - Risk of assessing to height of market is substantial, as recognized is the case law which requires and stresses stabilization to effectuate goal of stability of assessment and stability and predictability of municipal real estate tax revenue

APPENDIX

KeyCite Yellow Flag - Negative Treatment
Distinguished by City of Atlantic City v. Boardwalk Regency Corp., N.J.Super.A.D., June 22, 2000

10 N.J.Tax 288
Tax Court of New Jersey.

GLENPOINTE ASSOCIATES, et als., Plaintiffs,
v.
TOWNSHIP OF TEANECK, Defendant.

December 22, 1988.

Synopsis

SYNOPSIS

Condominium developer challenged county board of taxation's property tax assessments on finished and partially finished townhouse condominium units and on common elements of development. The Tax Court, Crabtree, J.T.C., held that: (1) separate assessment of common elements was improper; (2) county board of taxation had properly valued finished and unfinished units; and (3) developer had failed to establish that application of statutory discrimination ratio was confiscatory.

Ordered accordingly.

West Headnotes (9)

[1] **Taxation** Real property in general

Separate real property tax assessments for each condominium unit facilitates goal of Condominium Act to constitute each unit as separate parcel of real property to be dealt with by owner in same manner as any other parcel of real property. N.J.S.A. 46:8B–4.

2 Cases that cite this headnote

[2] **Taxation** Real property in general

County board of taxation could not impose separate assessments on common elements of condominium development, consisting of clubhouse, tennis courts, swimming pool and gatehouse, notwithstanding that only 30% of total number of units contemplated by condominium development had been completed and ready for use on relevant assessment dates; proportionate share of value of common elements should have been included in assessments of individual condominium units, whether fully or partially constructed. N.J.S.A. 46:8B–4, 46:8B–6.

5 Cases that cite this headnote

[3] **Taxation** Time of taking proceedings

Condominium developer's failure to file timely complaint with respect to property tax assessment on common elements of development rendered Tax Court without jurisdiction to award relief. N.J.S.A. 54:51A–1, subd. a.

[4] **Taxation** Valuation

Probative value of expert's opinion on valuation depends entirely upon facts and reasoning offered in support of it.

1 Cases that cite this headnote

[5] **Taxation** Valuation

In connection with condominium developer's challenge of property tax assessments on finished condominium units, appraisal of developer's expert was not probative of true value of subject properties; expert improperly reduced valuation by adjusting for washer, dryer, and refrigerator included with sale of each unit, discounted valuation for marketing costs associated with selling of units, and included adjustment for temporarily high interest rates.

1 Cases that cite this headnote

[6] **Taxation** Valuation

In connection with condominium developer's challenge to property tax assessments on finished units, conclusion of municipality's

expert was supported by sound reasoning and credible evidence; unlike developer's expert, municipality's expert declined to value condominium units according to models, as sales conclusively demonstrated absence of significant relationship between models and selling prices, and municipality's expert properly based valuation on actual sale price of units.

[7] **Taxation** Real property in general

In connection with condominium developer's challenge to property tax assessments on unfinished condominium units, developer's expert improperly allocated land value of units based upon developer's land acquisition costs under five-year-old contract, as contract was executed at point which was too remote in time to provide reliable indication of value.

[8] **Taxation** Valuation

In connection with condominium developer's challenge to property tax assessments on unfinished units, value estimates of municipality's expert were well documented and supported by credible evidence; municipality's expert used comparable land sales to support land value estimate allocable to each unit, expert used actual construction costs and added contractor's profit as developer acted as its own general contractor in connection with project, and expert properly included proportionate share of common elements assigned to each condominium unit.

5 Cases that cite this headnote

[9] **Taxation** Error as to valuation or amount

Condominium developer did not demonstrate that application of statutory discrimination ratio was confiscatory based upon expert's testimony that average assessment-to-sales ratio was 62.42%, whereas statutory discrimination ratio was 71%; difference between two ratios did not demonstrate extreme or severe circumstances or confiscatory nature of assessments, and expert's ratio was unweighted, unclassified and covered sales for only one year, whereas statutory ratio was weighted by property class and year and covered several years. N.J.S.A. 54:2–40.4 (Repealed.).

Attorneys and Law Firms

***291** *Daniel Amster* for plaintiff (*Amster & Rosensweig,* attorneys).

Edward G. Rosenblum (*Rosenblum & Rosenblum,* attorneys) and, *Jacob Schneider* (*Schneider, Balt & Ciancia,* attorneys) for defendant.

Opinion

CRABTREE, J.T.C.

These consolidated local property tax cases concern appeals from judgments of the Bergen County Board of Taxation affirming all assessments for the years 1983 through 1987 on finished and partially finished townhouse condominium units comprising part of the condominium development known as The Courts of Glenpointe in Teaneck, New Jersey. Plaintiff, Glenpointe Associates, also seeks review of county board judgments affirming the 1985, 1986 and 1987 assessments on the clubhouse, tennis courts, swimming pool and gatehouse located at the condominium development and constituting a common element as that term is defined in *N.J.S.A.* 46:8B–3(d). The common element, identified as Block 3712, Lot 5–C 0000, was assessed for all relevant years at:

Land	$ —0—
Improvements	269,000
Total	$269,000

The condominium, created by master deed filed with the Bergen County Clerk's office on July 23, 1982, covers 14.471 acres, is part of Block 3712, Lot 5, and comprehends 171 units constructed, or to be constructed, in two phases. Phase I consists of 88 units, all of which were finished and ready for occupancy by ***292** December 1982. The 83 units comprising Phase II were in various stages of completion on the assessing dates but none was completed and ready for use by the last assessing date, *i.e.,* October 1, 1986.

Not all 171 units are under appeal. The units which are the subject of this proceeding are as follows:

	Phase I	Phase II
1983	76	83
1984	69	83
1985	87	83
1986	88	83
1987	88	73

The units are all individually assessed in accordance with *N.J.S.A.* 46:8B–19. Glenpointe Associates, the condominium sponsor, is plaintiff in most of the appeals, but many appellants are owners who purchased their units from the sponsor.

The finished units have been valued by both experts by means of the market data approach; the unfinished units have been valued by the cost approach, supplemented by the market data approach for the land value.

I.

The recreational facilities.

The court will first address the assessment of the common element consisting of the clubhouse, tennis courts, swimming pool and gatehouse (hereinafter sometimes referred to as the recreational facilities).

The issue with regard to the recreational facilities is whether they may be separately assessed or whether the assessments of the condominium units must include a proportionate share of such facilities, thereby eliminating the separate assessment on those facilities. The issue arises because, on the assessing dates for the years 1985, 1986 and 1987, only 88 of 292 contemplated townhouse condominium units were completed and ready for occupancy, whereas the recreational facilities ***293** were completed and ready for use on all the relevant assessing dates.

The parties agree that the recreational facilities constitute a common element as that term is defined in *N.J.S.A.* 46:8B–3(d).

The courts of Glenpointe was established as a condominium by the filing of a master deed with the Bergen County Clerk's office on July 23, 1982. The condominium covers 14.471 acres and is part of Block 3712, Lot 5. The master deed and the offering plan contemplated the immediate development of regime "A" consisting of 171 townhouse units. The master deed and offering plan also revealed the sponsor's intention to establish regime "B" at some future time, which would comprise an additional 121 condominium units. All the units of both regimes would be served by the common elements represented by the recreational facilities.

The master deed provided that the owner of each unit in regime "A" also owned a percentage interest in the common elements. That interest was indivisible from the unit to which it pertained. Construction of the first 88 units was complete by the end of 1982. No additional units were completed and ready for occupancy before October 1, 1986.

The disposition of the issue before the court is governed by the Condominium Act, *N.J.S.A.* 46:8B–1 *et seq.*

A condominium is created and established by recording a master deed with the recording officer of the county in which

the land is situated. *N.J.S.A.* 46:8B–8. Each condominium unit constitutes a separate parcel of real property with which the owner may deal in the same manner as the law allows with respect to any other parcel of real property. *N.J.S.A.* 46:8B–4. The proportionate undivided interest in the common elements assigned to each unit is inseparable from such unit, and any conveyance, lease, mortgage or other disposition of a unit extends to the proportionate share of the common elements assigned to such units. *N.J.S.A.* 46:8B–6.

***294** **[1]** **[2]** All property taxes are separately assessed against each unit as a single parcel and not on the condominium property as a whole. *N.J.S.A.* 46:8B–19. The term "unit" is defined to include the share of the common elements appurtenant to it. *N.J.S.A.* 46:8B–3(*o*). The separate real property tax assessment for each condominium unit facilitates the goal of the Condominium Act to constitute each unit as a separate parcel of real property, to be dealt with by the owner in the same manner as any other parcel of real property. *Troy Village Realty Co. v. Springfield Tp.,* 191 *N.J.Super.* 559, 468 *A.*2d 445 (App.Div.1983).

Defendant contends that only 30% of the recreational facilities are relieved from separate assessment. Its theory is that, as only 88 units of a contemplated 292, *i.e.,* 30% of the total number of units contemplated by the condominium development, were completed and ready for use on the relevant assessing dates, the recreational facilities in question, which were constructed and ready for use prior to the first assessing date, served only those 88 units.

The flaw in this argument lies in the unstated assumption that the value of the common elements (*i.e.,* the recreational facilities) can only be transferred to, and included in, the value of completed condominium units. The Condominium Act imposes no such limitation. By statute, a condominium is created and established upon the filing of a master deed. The statute also clearly provides that each condominium unit is separately assessed and that, appurtenant to and inseparable from each unit, is a proportionate share of the common elements. Indeed, the statutory definition of a condominium unit includes the share of the common elements assigned to it. The separate assessment of each unit contemplated by *N.J.S.A.* 46:8B–19 may involve land only, or it may reflect land plus partial improvements, such as footings and foundations. Whatever the condition of the unit assessed, whether finished or unfinished, the unit's assigned share of the value of the common elements is included in the assessment.

***295** The separate assessment of the recreational facilities for the years 1985, 1986 and 1987 will be eliminated.

[3] Plaintiff argues that it is entitled to the same relief with respect to the common elements in question for tax year 1984. No complaint was filed with this court for that year and the record does not indicate whether an appeal was filed with the Bergen County Board of Taxation for 1984. Plaintiff bases its claim for relief upon the statute dealing with duplicative assessments, *N.J.S.A.* 54:4–54, which provides for corrective action by a municipal governing body or county board where real property is erroneously entered and assessed twice on the tax records. Plaintiff also asks this court to invoke its equity jurisdiction pursuant to *N.J.S.A.* 2A:3A–4(a). That statute authorizes this court to grant legal and equitable relief in order that all matters in controversy may be completely determined.

The jurisdiction of this court in local property tax matters includes review of county board actions pursuant to *N.J.S.A.* 54:51A–1(a) and direct review of large assessments pursuant to *N.J.S.A.* 54:3–21. The time for filing a complaint with this court under *N.J.S.A.* 54:51A–1(a) with respect to 1984 has long since expired. Accordingly, as plaintiff failed to file a timely complaint with this court with respect to 1984 the court is without jurisdiction to award plaintiff relief. The application of *N.J.S.A.* 2A:3A–4(a) concerning this court's equity jurisdiction presupposes jurisdiction of the subject matter in the first instance.

As indicated above, the condominium development known as The Courts of Glenpointe comprehends 171 units constructed, or to be constructed, in two phases.

II.

The finished units.

Eighty-eight townhouse condominiums were built by October 1, 1982. Their locations are as follows:

Building	Number of

No.	Address	Units
1	Lawrence Court	13
6	Millay Court	13
7	Lowell Court	18
8	Sandberg Court	18
9	Eliot Court	13
12	Whitman Court	13
		88

Sales of the units occurred as follows:

Number of Sales	Year
10	1982
6	1983
14	1984
35	1985
14	1986
79	

***296** The townhouse condominiums consisted of nine models of varying sizes, numbers of bedrooms and amenities. Some were one-story models, others were two-story models. Each building contained at least one of each of the nine models. The 79 sales which occurred in the years 1982 through 1986 involved all nine models, but the sales disclosed no pattern of price or range of prices according to model type. The sales prices of model A–3 units, for example (two-story, two-bedroom, 1,052 square feet), ranged from $114,000 on November 22, 1983 to $186,000 on April 24, 1986. A model A–3 unit sold for $140,000 on January 10, 1984, less than two months after another A–3 unit in a different building sold for $114,000. A model A–3 unit sold for $180,000 on July 18, 1986, three months after another unit of the same model but in a different building sold for $186,000.

An even more dramatic demonstration of the fact that the market rejected a price stratification according to unit model is found in the sales of an E–2 model unit and an F–1 model unit. The F–1 model has a larger living area (1,922 square feet compared to 1,908 for the E–2) and has three bedrooms compared to two for the E–2. The E–2 is a two-story unit with a balcony; the F–1 is a one-story unit with a patio. Yet an F–1 ***297** unit sold on April 27, 1984 for $205,000, while an E–2 unit in the same building as the F–1 sold less than two weeks later for $230,000.

Plaintiff's expert valued the units according to model and square feet of living area. His value estimate was based upon sales of the models, adjusted for reduction of items of personalty included in the sale, specifically, refrigerator, washer and dryer. He also adjusted the sale price for tax

years 1983 and 1984 to account for what he believed to be an extended marketing period, which was two years for units sold in 1982 and six months for units sold in 1983. This resulted in a 25% discount for 1982 (for tax year 1983) and 12% for 1983 (for tax year 1984).

The expert reasoned that high interest rates in 1982 and 1983 discouraged buyers and adversely affected the market's absorption of the 88 finished units. He points to the relative dearth of sales in 1982 and 1983 and the sharp increase in sales in 1984, 1985 and 1986 when interest rates dropped.

Defendant's expert also used the comparable sales approach, relying upon sales of the units themselves to value not only the sold units but the units still owned by Glenpointe Associates. He valued the sold units essentially at their selling prices in estimating values for the assessment year and adjusted those values by 10% to arrive at value estimates for subsequent and, where appropriate, prior years.

The expert declined to value the units according to models. He concluded that location in a given building, the location of the building itself, and the view afforded a particular unit made such an approach unreliable. Rather, he regarded the selling price as a more dependable indicator of market action.

[4] **[5]** The testimony and appraisal of plaintiff's expert are not probative of the true value of the subject properties. The probative value of an expert's opinion depends entirely upon the facts and reasoning offered in support of it. *Dworman v. Tinton Falls,* 1 *N.J.Tax* 445 (Tax Ct.1980), aff'd o.b. *per curiam* ***298** 180 *N.J.Super.* 366, 3 *N.J.Tax* 1, 434 *A.*2d 1134 (App.Div.1981).

The expert's adjustment for the washer, dryer and refrigerator is not supported by the record. While the expert theorized that these items could be removed without damage to the unit and that they are not ordinarily sold with the real estate, he admitted that he had not examined any of the contracts of sale to verify his suppositions.

The expert's marketing discount theory must be rejected as a matter of law, as it violates the uniformity clause of the New Jersey Constitution. The decision of this court in *Tall Timbers, Inc. v. Vernon Tp.,* 5 *N.J.Tax* 299 (Tax Ct.1983) is directly in point. That case involved a condominium campsite which had been subdivided into 534 separately assessed parcels. In valuing the campsites for assessment purposes the taxpayer's appraiser discounted the average selling price by 50% to account for overhead and marketing costs. The taxing district's appraiser, on the other hand, discounted the value of the unsold campsites which remained in the hands of the developer while valuing the sold campsites at their full selling prices. Judge Lasser rejected the discount theories of both experts and held that each campsite must be assessed at its market value as reflected by comparable sales without discounting. While recognizing the existence of appraisal authority to support a developer's discount for marketing a subdivision, the court held that, for local property tax purposes, each condominium campsite must be assessed separately "according to the same standard of value." *N.J.Const.* (1947), Art. VIII, § 1, par. 1(a).

After analyzing the history of that section of the Condominium Act governing real property tax assessments (*N.J.S.A.* 46:8B–19), Judge Lasser concluded that application of the discount theory would violate the uniformity clause. His reasoning is worth quoting:

> In the subject case, uniformity of assessment requires the assessment of each campsite to be based on its market value as reflected by comparable sales, without discounting. Marketing costs and time considerations are reflected in the sales price of each campsite. There is no justification for discountingthe ***299** sales price of a campsite that has been sold. To value a sold campsite at a discounted value would be to use a "standard of value" different from that used for all other properties in the taxing district, which are valued based on their market value. To permit discounting of the sales prices of the sold campsites would result in a lack of uniformity between these campsite assessments and other assessments in the taxing district. Uniformity of assessment requires separate valuation of each campsite, whether one person owns one or many. [5 *N.J.Tax* at 307]

Moreover, the expert's reflection of temporary high interest rates in his value estimates is contrary to the principle of assessment stability, which holds that valuation for tax assessment purposes must have some measure of permanency rendering it secure against general temporary conditions such as inflation or deflation. *Hackensack Water Co. v. Div. of Tax Appeals,* 2 *N.J.* 157, 163, 65 *A.*2d 828 (1949); *Rek Investment Co. v. Newark,* 80 *N.J.Super.* 552, 559, 194 *A.*2d 368 (App.Div.1963). As we said in *Inwood at Great Notch v. Little Falls Tp.,* 6 *N.J.Tax* 316 (Tax Ct.1984) with specific reference to high rates:

> The strong public interest in assessment stability and its corollary, stable, predictable municipal revenues, require that tax assessments not be hostage to sharp fluctuations traceable to volatile swings in the financial markets.... [6 *N.J.Tax* at 332]

Thus, the principle of assessment stability requires that temporary high interest rates, which tend to extend the marketing period for all properties in the municipality, be disregarded.

This court has also ruled that the time required to market a property must be disregarded for local property tax purposes. *ITT Cont'l Baking Co. v. East Brunswick Tp.,* 1 *N.J.Tax* 244 (Tax Ct.1980). In that case Judge Andrew observed:

> The value to be determined is as of October 1 of the pretax year, a specified date. *N.J.S.A.* 54:4–23. The question is, what would the property sell for at a bona fide sale on October 1? *Ibid.* The period of time it would take to sell realty does not enter into a determination of value as of the specified date.... [*Id.* at 250]

[6] The conclusions of defendant's expert are supported by sound reasoning and by the credible evidence. Unlike plaintiff's expert he declined to value the condominium units according to models, as the sales conclusively demonstrated the absence ***300** of a significant relationship between models and selling prices. Defendant's expert wisely let the market do its work and his value estimates are accurate reflections of market action. His 10% annual adjustment for time is, if anything, conservative. The evidence in this case indicates a large number of resales of the subject units; and those resales reflect value increases, measured by sale prices, of anywhere from 9.8% annually to as much as 28% annually.

In view of the foregoing I find the true value of all finished condominium units (Phase I) to be as estimated by defendant's expert.

III.

The unfinished units.

Eighty-three townhouse condominiums units (Phase II) were under construction on all relevant assessing dates. Their locations are as follows:

Building No.	Address	Number of Units
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2	London Court	13
3	Alcott Court	13

4	Carlyle Court	18
5	Wadsworth Court	13
10	Peabody Court	13
11	Sinclair Court	13
		--
		83

Plaintiff's expert valued each unfinished unit based on actual construction costs furnished by plaintiff, to which he added an allocable land value based upon plaintiff's land acquisition cost pursuant to a 1977 contract with Teaneck Redevelopment Agency. In estimating the value of the improvements, *i.e.,* the footings and foundations, he did not add contractor's profit. While he claimed to use actual construction costs he testified that he trended the cost for each year after the first tax year (1983) according to the Marshall Valuation cost index. Finally, ***301** he made an adjustment for depreciation of 1% per annum. [1] He thus arrived at the following value estimates for each of the Phase II units (including land):

Defendant's expert valued each of the Phase II units on the basis of the actual cost of construction, plus overhead and contractor's profit, as of each assessing date. He assigned a land value of $16,500 a unit for tax year 1983 and adjusted this estimate by approximately 10% for each subsequent year. His land value estimate was predicated on nine comparable sales of land purchased for condominium development. In addition to the total sale price and date of sale he indicated the total acreage, permissible density in terms of units per acre and the price per unit for each sale. He testified that developers buy land for condominium use on the basis of permissible density, *i.e.,* they are willing to pay for the land according to the maximum number of condominium units allowed per acre. The ***302** prices paid by the purchasers of the nine parcels of land, expressed in terms of condominium units, ranged from $4,700 a unit per acre to $29,800 a unit per acre. For seven of the nine sales the prices per condominium unit ranged from $10,000 to $23,500. The dates of the sales ranged from June 1980 to April 1984, all in reasonable proximity to the first three assessing dates. The units per acre to be constructed on the sites of the comparable land sales ranged from 3.1 to 27. The most comparable of these sales to the subject are sales # 1 and # 3, which involve, respectively, 71 and 120 units, 15.7 acres and 8.12 acres and 4.4 units per acre and 14.8 units per acre. The total number of units planned for both Phase I and Phase II of the subject condominium development is 171; the total land area of the subject is 14.471. Thus, 11.8 units per acre were contemplated by the developer at the time of acquisition of the subject land. The relevant Teaneck Ordinance permits 15 units an acre.

The expert valued each of the Phase II units as follows:

	1983	**1984**	**1985**	**1986**	**1987**
	----	----	----	----	----
Land	$16,500	$18,000	$20,000	$22,000	$24,000
Impvts.	7,500	7,900	8,300	8,700	9,200
Total	$24,000	$25,900	$28,300	$30,700	$33,200

Defendant's expert also estimated the true value of the clubhouse, gatehouse, swimming pool and tennis courts (the recreational facilities) as of the assessing dates for tax years 1984 through 1987. Using construction cost data supplied by plaintiff he estimated the true value of the recreational facilities to be $337,900 on October 1, 1983. He then adjusted this amount by 10% annually to arrive at the following value estimates for the ensuing years:

10/1/84	$371,700

10/1/85	408,900
10/1/86	449,800

***303** Plaintiffs' expert declined to value the recreational facilities on the ground that, as common elements of a condominium development, they could not be separately assessed.

[7] The valuation estimates of plaintiff's expert are critically flawed. First of all, his allocation of land value, based as it is upon plaintiff's land acquisition cost under a 1977 contract, is not probative of the subject property's true value on October 1, 1982, the earliest of the assessing dates in issue. The contract was executed at a point which is too remote in time to provide a reliable indication of value. The expert opined that interest rates, construction costs and the costs of on-site and off-site improvements all increased in the interval between the date of execution of the contract and the assessing date in question. However, he admitted that increased costs and interest rates affected all vacant land in Bergen County; yet he made no study of vacant land sales to prove the absence of appreciation in land values during the time interval in question. As for the increased cost of on-site and off-site improvements he opined that, if the subject property had been filled, graded and ready for construction when the purchase contract was signed, he would have made no time adjustment. Thus, the rising cost of on-site and off-site improvements could not have been a material factor in the expert's decision to make no time adjustment.

Moreover, his estimates of improvement values are not convincing. He claimed to use actual costs in accordance with data furnished by plaintiff but, from his appraisal and testimony, it appears that he used actual costs for 1982 only, and trended those costs for the remaining years according to the Marshall Valuation cost index. Actual cost data were available for later years and they should have been used.

[8] The value estimates of defendant's expert, on the other hand, are well documented and otherwise amply supported by the credible evidence. His comparable land sales support his land value estimate; in particular they demonstrate the accuracy of his observation that condominium developers frequently buy land on the basis of anticipated density of condominium ***304** units. His time adjustment of 10% annually is also reasonable and, the evidence shows, is somewhat on the conservative side. His allocation of a uniform land value to each unit is also reasonable. The evidence submitted with respect to values of the finished units indicates that differences in values of the units are ascribable more to the view and amenities of the improvements than to the underlying land.

Furthermore, while the master deed sets forth the percentage interest in the common elements (which includes the land) for each of the 171 units broken down by buildings and the percentage interests appear to relate to the nine models, there is no explanation in the master deed or the offering plan of the quantum of differences in the percentages among the models. It is not for this court to speculate on the basis for the differences.

Likewise, the expert's value estimates of the improvements are soundly based upon construction costs actually incurred as at each assessing date. Original cost of construction is properly to be considered on the question of value for property tax purposes. *Bostian v. Franklin State Bank,* 167 *N.J.Super.* 564, 401 *A.*2d 549 (App.Div.1979), on remand 1 *N.J.Tax* 270 (Tax Ct.), aff'd per o.b. *per curiam* 179 *N.J.Super.* 174, 2 *N.J.Tax* 391, 430 *A.*2d 1140 (App.Div.1980). In this case there are no other proofs of value of the pilings and foundations in Phase II; construction cost is thus controlling. The expert was also correct in adding contractor's profit as plaintiff acted as its own general contractor. Sound appraisal principles require the inclusion of contractor's profit in direct costs. American Institute of Real Estate Appraisers, *The Appraisal of Real Estate* (9 ed. 1987) 352.

The land is a common element, *N.J.S.A.* 46:8B–3(d)(i); so are the recreational facilities. The proportionate share of the common elements assigned to each condominium unit is inseparable from such unit and any conveyance, lease, mortgage or other disposition of a unit extends to the unit's proportionate share of the common elements. *N.J.S.A.* 46:8B–6. All property taxes ***305** must be separately assessed against each unit as a single parcel. *N.J.S.A.* 46:8B–19. The definition of unit includes the proportionate share of the common elements assigned to it. *N.J.S.A.* 46:8B–3(*o*).

Thus, the common elements may not be separately assessed; a proportionate share of their value, however, is included in the

tax valuation of each unit. This value includes the land value assigned to each unit and a proportionate share of the value of the recreational facilities. [3] The court finds those values to be as estimated by defendant's expert for all the years in issue.

The land value ascribable to each unit is:

1983	$16,500
1984	18,000
1985	20,000
1986	22,000
1987	24,000

The proportionate share of the value of the recreational facilities will be added to the land value and the cost-derived improvement value in the following manner:

1984	$337,900	÷	171 units	=	$1,980 *
1985	371,700	÷	171 units	=	2,170
1986	408,900	÷	171 units	=	2,390
1987	449,800	÷	171 units	=	2,630

In view of the foregoing I find the true value of each unit in Phase II to be as follows on the indicated assessing dates:

	10/1/82	10/1/83	10/1/84	10/1/85	10/1/86
	---	---	---	---	---
Land	$16,500	$18,000	$20,000	$22,000	$24,000
Improvements	7,500	7,900	8,300	8,700	9,200
Allocable share of rec'l facilities	—0—	1,980	2,170	2,390	2,630
True value	$24,000	$27,880	$30,470	$33,090	$35,830

***306** *IV.*

Discrimination.

[9] Before addressing the application of chapter 123 the court must deal with plaintiff's claim that the statutory remedy for discrimination relief is inadequate and the court is required by the New Jersey Constitution to apply the unweighted, unclassified ratio to its finding of true value for each year in order to fix the assessments on the subject property.

Our Supreme Court has declared that chapter 123 is the exclusive remedy for assessment discrimination relief, unless it is shown that the application of the statute

leaves the taxpayer with a virtually confiscatory assessment. *Murnick v. Asbury Park,* 95 *N.J.* 452, 471 *A.*2d 1196 (1984) (citing with approval *525 Realty Holding Co. v. Hasbrouck Heights,* 3 *N.J.Tax* 206 (Tax Ct.1981) and other decisions of this court). The Supreme Court also observed that "a taxpayer's right to relief should be determined in accordance with chapter 123 in all but the most extreme or severe circumstances." 95 *N.J.* at 463, 471 *A.*2d 1196.

In an effort to prove the existence of those extreme and severe circumstances—and the confiscatory nature of the application of chapter 123—plaintiff offered the testimony of Doctor Arthur Cohen, a statistician. From a statistical sampling of 326 sales Doctor Cohen found the average assessment-to-sales ratio for 1983 to be 62.42%. The chapter 123 ratio for the same year was 71%. Quite apart from the fact that the difference between these two ratios does not demonstrate extreme or severe circumstances or the confiscatory nature of the assessments ***307** after applying chapter 123, the comparison of the two ratios is meaningless. Doctor Cohen's ratio is unweighted and unclassified and covers sales for only one year, whereas the chapter 123 ratio is weighted by property class and year and covers several years. Doctor Cohen's ratio is derived from sales occurring in the 12 months ended June 30, 1983; the ratio employed in chapter 123 is determined partly on the basis of sales occurring during the 12 months ended June 30, 1982. What this court said in *Rudd v. Cranford Tp.,* 4 *N.J.Tax* 236 (Tax Ct.1982), one of the decisions cited with approval in *Murnick v. Asbury Park, supra,* applies with equal force here:

> The chapter 123 ratio is promulgated by the Director as of October 1 of the pretax year. *N.J.S.A.* 54:1–35a. Plaintiff, however, uses the unweighted, unclassified ratio promulgated as of October of the tax year. Plaintiff's comparison is inappropriate. The constitutional sufficiency of the statutory remedy for discrimination can only be examined by comparing two ratios promulgated as of the same date. Given the obvious fact of a significant annual appreciation in value of the generality of properties in a municipality such as Cranford, and the reflection thereof in a declining average ratio, the use of a ratio promulgated one year later than the ratio with which it is compared in aid of ascertaining the latter's constitutional adequacy is manifestly unfair and inequitable to defendant and its other taxpayers. When the ratios are realigned so that the unweighted ratio and the chapter 123 ratio are viewed at the same temporal reference point, the quantitative difference between the unweighted, unclassified ratio and the chapter 123 ratio is significantly narrowed. It is narrowed, in fact, to the point where such difference loses all constitutional significance.
>
> ....
>
> In addition, the unweighted ratio, derived from a mere one-year sales study, is subject to temporary market fluctuations and ascribes inordinate influence to inadequate sales samples in a single year. The Legislature recognized this when it changed the chapter 123 ratio from a one-year, unweighted and unclassified ratio to the classified and weighted ratio, effective for 1979 and later years. See Committee Statement to Assembly Bill 1492, *L.*1979, *c.* 51. The new chapter 123 ratio reflects sales over a period of years, with a different weight assigned to each year on a multiple regression basis. The evident legislative design was to promote stability in assessments, and the statute implementing that objective enjoys a strong presumption of constitutionality.... [4 *N.J.Tax* at 248–249; citations omitted]

The foregoing analysis applies with equal force to tax years 1985, 1986 and 1987.

***308** The application of Doctor Cohen's sales ratios for tax year 1984 is not feasible, as 1984 was a revaluation year. As Doctor Cohen relied upon sales occurring in the 12 months ended June 30, 1984, the sales occurring in the last six months of that year involved properties that were all revalued at 100%. Thus, there is no basis for comparison of post–1983 sales with sales occurring prior to July 1, 1983, because the latter involved properties assessed at a level substantially below 100%.

For these reasons, then, I conclude that plaintiff has not shown that the application of chapter 123 leaves it with confiscatory assessments for any of the years before the court. Chapter 123 will thus be applied to all years except 1984, which was a revaluation year to which the statute does not apply. As this court has observed on several prior occasions, the application of chapter 123 is automatic; it must be applied where the ratio of assessed to true value exceeds the upper limit or falls below the lower limit of the common level range. *Weyerhaeuser Co. v. Closter Boro.,* 190 *N.J.Super.* 528, 464 *A.*2d 1156 (App.Div.1983); *Devonshire Development Assoc. v. Hackensack,* 184 *N.J.Super.* 371, 2 *N.J.Tax* 392, 446 *A.*2d 201 (Tax Ct.1981).

Counsel will prepare computations, to be exchanged and submitted to the court pursuant to *R.* 8:9–3, showing the correct assessments for each of the Phase I units under appeal in accordance with the court's findings of true value hereinabove set forth and the application of *N.J.S.A.* 54:51A–6 for all years under review except 1984, which is a revaluation year to which the statute does not apply. As to that year the court's finding of true value will be the correct assessment, except where such value exceeds the original assessment, in which case the original assessment will be affirmed. As defendant failed to seek an increase before the county board for 1984 it is foreclosed from such relief in this court, even though, for that year, in any given case, the true value may exceed the assessment. *F.M.C. Stores Co. v. Morris Plains Boro.,* 100 *N.J.* 418, 495 *A.*2d 1313 (1985).

***309** The average ratios and upper and lower limits of the common level range are as follows:

Year	Average ratio	Upper Limit	Lower Limit
1983	71%	82%	60%
1985	90.48%	100%	76.91%
1986	81.38%	93.59%	69.17%
1987	67.33%	77.43%	57.23%

The correct assessments for each unit in Phase II for all years under review are as follows (rounded):

	1983	1984	1985	1986	1987
	----	----	----	----	----
Land	$11,700	$15,000	$18,000	$17,900	$16,400
Impvts.	5,300	7,000	9,500	9,000	7,660
Total	$17,000	$22,000	$27,500	$26,900	$24,000

Judgments will be entered accordingly, following submission of the aforementioned calculations.

All Citations

10 N.J.Tax 288

Footnotes

1 Plaintiff's expert erroneously included his allocable land value in the depreciation estimate.

	Buildings 2, 3, 5, 10, 11			
Year	Costs	Time Factor [2]	Depreciation	Value
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10/1/82	$10,308	1.00	0	$10,300
10/1/83	10,308	1.086	(100)	11,100
10/1/84	10,308	1.178	(200)	11,900
10/1/85	10,308	1.257	(400)	12,600
10/1/86	10,308	1.331	(500)	13,200

		Building 4		
Year	Costs	Time Factor [2]	Depreciation	Value
10/1/82	$ 8,889	1.00	0	$ 8,900
10/1/83	8,889	1.086	(100)	9,600
10/1/84	8,889	1.178	(200)	10,300
10/1/85	8,889	1.257	(300)	10,900
10/1/86	8,889	1.331	(500)	11,300

2 Cost index, Marshall Valuation Service.

3 Normally, the value of common elements is reflected in sales, but in this case, where we are dealing with the value of unfinished units, the only way to reflect the value of the common elements is to employ the method utilized by defendant's expert.

* All figures in the column are rounded.

End of Document

KeyCite Yellow Flag - Negative Treatment
Distinguished by Casino Reinvestment Development Authority v. Katz, N.J.Super.L., July 13, 2000

2 N.J. 157
Supreme Court of New Jersey.

HACKENSACK WATER CO.
v.
DIVISION OF TAX APPEALS et al. (two cases).
NORTH BERGEN TP.
v.
DIVISION OF TAX APPEALS et al.

Nos. A—129 and A—130, A—128.
|
April 25, 1949.

Synopsis
Appeal from former Supreme Court.

Certiorari proceedings by the Hackensack Water Company and the Township of North Bergen in the County of Hudson, a municipal corporation, respectively, to review judgments of the Division of Tax Appeals, State Department of Taxation and Finance, fixing the 1944 and 1946 tax assessments on Water Company's personal property and dismissing Township's appeal from the 1945 assessment, 55 A.2d 903, 26 N.J.Misc. 6. From a judgment of the former Supreme Court, 137 N.J.L. 599, 61 A.2d 187, dismissing the writs as to the 1944 and 1946 assessments and reversing the judgment of the Division of Tax Appeals which dismissed the appeal from 1945 assessment and fixing assessed value of the property for 1945, the Hackensack Water Company appeals.

Judgment of former Supreme Court as to assessments for 1944 and 1946 affirmed, and judgment as to 1945 assessment reversed, and judgment of Division of Tax Appeals as to such assessment affirmed.

West Headnotes (17)

[1] **Taxation** Nature and necessity of assessment

While tax litigation should be terminated with definiteness, if possible, each annual assessment of property for taxation is a separate entity distinct from assessment for previous or subsequent years.

10 Cases that cite this headnote

[2] **Taxation** Valuation of Property

The Constitution requires that property be assessed for taxation at its true value, and the statutory criterion for determining such value is the consideration of the market value at a fair and bona fide sale by private contract. N.J.S.A. 54:4–23; N.J.S.A.Const.1844, art. 4, § 7, par. 12, as amended in 1875.

17 Cases that cite this headnote

[3] **Taxation** Valuation of Property

A selling price is a guiding indicium of fair value for purpose of tax assessment and ordinarily is merely evidential, though it may become controlling, subject to limitation that determination of fair value properly involves the weighing and appraising of all component factors and circumstances. N.J.S.A. 54:4–23; N.J.S.A.Const.1844, art. 4, § 7, par. 12, as amended in 1875.

30 Cases that cite this headnote

[4] **Taxation** Valuation of Property

Depreciation and obsolescence are factors in determining value of property for purpose of tax assessment, but each is subject to countervailing factor of an increase in building costs brought about by economic conditions lessening the value of the dollar. N.J.S.A. 54:4–23; N.J.S.A.Const.1844, art. 4, § 7, par. 12, as amended in 1875.

1 Cases that cite this headnote

[5] **Taxation** Valuation of Property

The value of property for purpose of tax assessment is in essence the value which it has in exchange for money. N.J.S.A. 54:4–23; N.J.S.A.Const.1844, art. 4, § 7, par. 12, as amended in 1875.

8 Cases that cite this headnote

[6] **Taxation** Valuation of Property

Value of property for purpose of taxation has some measure of permanency which renders it secure against general, temporary inflation or deflation, and changed economic conditions do not necessarily justify an increase or decrease in valuation. N.J.S.A. 54:4–23; N.J.S.A.Const.1844, art. 4, § 7, par. 12, as amended in 1875.

12 Cases that cite this headnote

[7] **Appeal and Error** Necessity and effect of findings by intermediate court

Findings of fact by Supreme Court on conflicting evidence or on uncontroverted evidence reasonably susceptible of conflicting inferences are conclusive on appeal where such findings of fact are based upon competent evidence.

[8] **Taxation** Scope of review

Findings by former Supreme Court on conflicting evidence as to true value of water company's personal property for purposes of taxation, being supported by competent evidence, were conclusive on appeal. N.J.S.A. 2:81–8, 54:4–23; N.J.S.A.Const.1844, art. 4, § 7, par. 12, as amended in 1875.

1 Cases that cite this headnote

[9] **Taxation** Nature and scope of remedies in general

The right of appeal to Division of Tax Appeals is purely statutory, and appellant must comply with all applicable statutory requirements. N.J.S.A. 54:2–39, 54:3–21.

6 Cases that cite this headnote

[10] **Taxation** Certification or other authentication in general

Assessments levied on property in assessor's duplicate are not complete until county board of taxation certifies the assessor's duplicate to tax collector. N.J.S.A. 54:4–35, 46, 47, 55.

7 Cases that cite this headnote

[11] **Taxation** Persons entitled

A taxing district can appeal to Division of Tax Appeals only from a judgment of the county board of taxation. N.J.S.A. 54:2–35, 39, 54:3–21, 54:4–35, 46, 47, 55.

[12] **Taxation** Constitutional and statutory provisions

The inclusion in revision of 1937 of general provisions of section 54:2–35 relating to appeals, from any action of county board of taxation was not intended to modify the specific provisions of sections 54:3–21 and 54:2–39, dealing with taxing district's right of appeal, which were later in point of time of enactment. N.J.S.A. 54:2–35, 39, 54:3–21.

7 Cases that cite this headnote

[13] **Statutes** General and specific statutes

In event of conflict between general and specific statutes covering the subject more minutely and definitely, the specific will prevail as an exception to the general statute.

12 Cases that cite this headnote

[14] **Statutes** Conflict

Where statute contains contradictory provisions, the primary object is to ascertain the legislative design with reasonable certainty.

2 Cases that cite this headnote

[15] **Statutes** Construction of Revised Statutes and Codes

Where irreconcilable statutory provisions on the same subject, separated in point of time of enactment so that earlier section was by implication repealed by the later, or embodied in a revision of general laws, the reenactment of earlier section is deemed an oversight and ineffective, unless a contrary policy and intent is clearly and unmistakably indicated by provisions of the revision in pari materia.

2 Cases that cite this headnote

[16] **Taxation** Review of proceedings

Taxation Persons entitled

The legislative scheme is to provide a review of assessed valuations on appeal by either the taxpayer or taxing district, first in the county board of taxation and secondly in the Division of Tax Appeals. N.J.S.A. 54:2–35, 39, 54:3–21.

7 Cases that cite this headnote

[17] **Taxation** Estoppel or waiver

Taxation Authority and Powers of Board or Officer

The Division of Tax Appeals has only jurisdiction to review action by the county board of taxation sitting in its appellate capacity, and township could not appeal directly from personal property assessments as reduced by county board of taxation to Division of Tax Appeals without first appealing to county board. N.J.S.A. 54:2–35, 39, 54:3–21, 54:4–35, 46, 47, 55.

5 Cases that cite this headnote

Attorneys and Law Firms

***160** ****829** Joseph Keane and Milton, McNulty & Augelli, all of Jersey City, for appellant.

***161** Nicholas S. Schloeder, of Union City, for respondents.

Opinion

OLIPHANT, Justice.

This is a tax case. It is an appeal from judgments of the former Supreme Court upon three writs of certiorari to review three judgments of the Division of Tax Appeals involving assessments of personal property of the appellant located in the Township of North Bergen for the years 1944, 1945 and 1946. The appeals were heard together.

The property consisted of water mains, hydrants, meters, connections, etc., mostly underground, and comprised but part of the entire water system owned by appellant. For the year 1940 the township assessor had fixed a valuation of $1,500,00 on the identical property here involved and on appeal the former Supreme Court established the value, for assessment purposes, at $940,000, Hackensack Water Co. v. State Board of Tax Appeals, 1943, 129 N.J.L. 535, 30 A.2d 400, which was affirmed by the former Court of Errors and Appeals, 1943, Hackensack Water Co. v. North Bergen Tp., 130 N.J.L. 483, 33 A.2d 821. This figure remained until the years here involved.

For 1944 the local assessment was $1,400,000. On the filing of the duplicate by Hudson County Board of Taxation this was reduced, without a hearing having been ****830** held, to $940,000. An appeal to the same board, sitting in its appellate capacity, was dismissed for lack of jurisdiction and on appeal to the Division of Tax Appeals the assessment was placed at $1,225,000. 55 A.2d 903, 26 N.J.Misc. 6. This was affirmed by the former Supreme Court, 137 N.J.L. 599, 61 A.2d 187.

As to 1945, the township assessment being at the same figure and which the County Tax Board reduced to $940,000, the township appealed directly to the Division of Tax Appeals, thus by-passing the County Board in its appellate capacity. The Division of Tax Appeals dismissed the appeal on procedural grounds holding the statute required a prior appeal to the Hudson County Board of Taxation. R.S. 54:3—21,

54:2—39, N.J.S.A. This action was reversed by the former Supreme Court which fixed the valuation at $1,225,000.

***162** For 1946, from a local assessment of $1,400,000 the Division of Tax Appeals affirmed a valuation of $1,250,000 placed upon the property by the County Board, which was reduced to $1,225,000 by the former Supreme Court.

Appellant contends inasmuch as the former Supreme Court, whose judgment was affirmed by the Court of Errors and Appeals, placed a valuation of $940,000 on this property for the year 1940, and there being no physical change in the property except its increased age, that valuation should remain except for proper depreciation allowances.

[1] While it is desirable that tax litigation should not be prolonged and continued from year to year and should be brought to an end with definiteness, if possible, it is settled that 'Each annual assessment of property for taxation is a separate entity, distinct from the assessment of the previous or subsequent year.' United New Jersey R. & Canal Co. v. State Board, etc., Sup.1925, 101 N.J.L. 303, 128 A. 427, 431; Central R. Co. of New Jersey v. State Tax Dept., Err. & App. 1933, 112 N.J.L. 5, 169 A. 489.

On each assessment the test is does it reflect true value?

A full hearing was had. Both parties relied completely on the testimony of experts, yet appellant's complaint, in short, is that the testimony of the township's witnesses was based entirely on illusory standards and they argue to the effect that reproduction costs, less depreciation or obsolescence, was the controlling element in the case. This is not so, it was merely one of the elements considered.

[2] **[3]** **[4]** **[5]** The constitutional provision, Art. 4, sec. 7, par. 12 of the 1844 constitution, as amended in 1875, N.J.S.A., requires that property should be assessed for taxation at its true value. The statutory criterion, R.S. 54:4—23, N.J.S.A., for determining that value is the consideration of the market value at a fair and bona fide sale by private contract. A selling price is a guiding indicium of fair value and ordinarily is merely evidential although it might under peculiar circumstances become controlling, subject to the limitation that the determination properly involved the weighing and appraising of all component factors and adventitious circumstances. ***163** Depreciation and obsolescence are factors in determining value but each is subject to the countervailing factor of an increase in building costs brought about by economic conditions lessening the value of the dollar. A change in the value of money may result in giving the property a market value which, for a compensating period, disregards allowances for depreciation and obsolescence. True value of property of any kind is in the essence, the value which it has in exchange for money. L. Bamberger & Co. v. Division of Tax Appeals, Sup.1948, 62 A.2d 389; North Bergen Tp. in Hudson County v. Bergen Blvd. Holding Co., Err. & App. 1946, 133 N.J.L. 569, 45 A.2d 623; Cf. New Jersey Bell Tel. Co. v. City of Newark, Sup.1937, 118 N.J.L. 490, 193 A. 844, affirmed Err. & App. 1940, 124 N.J.L. 451, 12 A.2d 675; State Board of Assessors v. Central R.R. Co., Err. & App. 1886, 48 N.J.L. 146, page 311, 4 A. 578.

[6] We are not in accord with the opinion of the Supreme Court wherein it speaks of changed economic conditions justifying ipso facto an increase in valuation. This in itself is not a sufficient reason for an increase in valuation any more than a depression would call for a downward revision in ****831** accordance with new market conditions thereby created, however, temporary. Value for the purposes of taxation has some measure of permanency which renders it secure against general temporary inflation or deflation.

It is not possible to measure with mathematical precision the value of the property here assessed. The market affords no test for such properties as they are rarely the subject of sale, but there are numerous factors stated above, which enter into the calculation of the true value of such property. There was competent and conflicting testimony before the Supreme Court with respect to these elements of true value and the Supreme Court pursuant to its statutory duty, R.S. 2:81—8, N.J.S.A., reviewed the law and the facts and found the true value of the properties in question for the years 1944 and 1946, was $1,225,000.

[7] **[8]** It is a settled rule that findings of fact by the Supreme Court on conflicting evidence, or on uncontroverted evidence reasonably susceptible of conflicting inferences are ***164** conclusive on appeal where such findings of fact are based upon competent evidence. Jersey City v. State Water Policy Commission, Err. & App. 1937, 118 N.J.L. 72, 191 A. 456; Dana College v. State Board, etc., Err. & App. 1937, 117 N.J.L. 530, 189 A. 620; West Shore R. Co. v. Board of Public Utility Commissioners, Err. & App. 1934, 112 N.J.L. 83, 169 A. 829; Angelotti v. Town of Montclair, Err. & App. 1932, 109 N.J.L. 360, 162 A. 565; Kohn v. Tilt, Err. & App. 1926, 103 N.J.L. 110, 134 A. 658; Yellow Pine Co. v. State Board of Assessors, Err. & App. 1905, 72 N.J.L. 182, 61 A. 436; Moran

v. City of Jersey City, Err. & App. 1896, 58 N.J.L. 653, 35 A. 284. The findings below as to the years 1944 and 1946, being supported by competent proof are hereby affirmed.

These causes arose under the old constitution and we find no occasion to apply Rule 1:2—20.

The assessment for the year 1945 presents a different problem.

As heretofore stated the respondent township did not appeal this assessment to the County Tax Board, in its appellate capacity, but did appeal directly to the Division of Tax Appeals. The appeal was filed December 15, 1945.

[9] **[10]** The right of appeal to the Division of Tax Appeals is purely statutory and the appellant is required to comply with all applicable statutory requirements. R.S. 54:4—35, N.J.S.A., requires an assessor to file his complete assessment list or duplicate on or before January 10th of the year following the assessing date. R.S. 54:4—46, 47, N.J.S.A., requires the County Board of Taxation to examine, revise and correct the assessor's tax list and duplicate, and by virtue of R.S. 54:4—55, N.J.S.A., it must certify to the tax collector the 'corrected, revised and completed duplicate * * * on or before April 1st.' The assessments levied on the property in the assessor's duplicate are not complete until the County Board certifies the assessor's duplicate to the tax collector. Middletown Tp. v. Ivins, Sup.1925, 102 N.J.L. 36, 130 A. 648.

The section of the Tax Act, R.S. 54:3—21, N.J.S.A., permits a taxing district 'which may feel discriminated against by the assessed valuation of property' to appeal to the County Board of Taxation on or before August 15th. But a municipality cannot determine if it is discriminated against until after ***165** the assessment is corrected, revised and completed because until then the amount of the assessment is unknown.

It can thus be seen that the purpose of requiring a County Board of Taxation to certify the completed duplicate on or before April first is to afford an appellant ample time to prepare and file a petition for appeal with the County Board of Taxation before August 15th, the time limited for filing appeals.

[11] R.S. 54:2—39, N.J.S.A., authorizes an appellant, dissatisfied with the judgment of the County Board, to appeal to the Division of Tax Appeals. This all spells out the progressive theme of the Tax Act and it is clear there can be no appeal except from a judgment of the county board. This is the obvious legislative policy as expressed in the statutes.

[12] **[13]** But it is contended by respondent that R.S. 54:2—35, N.J.S.A., gives to the taxing district the right to appeal a ****832** local assessment direct to the Division of Tax Appeals. This statute is a general provision while R.S. 54:3—21 and 54:2—39, N.J.S.A., are specific. The inclusion of section 54:2—35 in the Revision of 1937 was obviously not intended to modify the specific provisions of sections 54:3—21 and 54:2—39 relating to appeals such as we are here concerned with. We are satisfied this was the legislative intent, which must govern. Moreover, the latter two sections were later in point of time of enactment. The rule is 'where there is any conflict between a general and specific statute covering a subject in a more minute and definite way the latter will prevail over the former and will be considered an exception to the general statute.' Ackley v. Norcross, Sup.1939, 122 N.J.L. 569, 6 A.2d 721, 722, affirmed Err. & App. 1940, 124 N.J.L. 133, 11 A.2d 106.

[14] **[15]** Where there are two contradictory provisions in a statute the primary object is to ascertain the legislative design with reasonable certainty. As said by Mr. Justice Heher in speaking for the former Supreme Court in Re Huyler, Sup.1945, 133 N.J.L. 171, 43 A.2d 278, 280, 'where two irreconcilable statutory provisions on the same subject, separated in point of time of enactment so that the earlier section was by implication repealed by the later, are embodied in a revision ***166** of general laws, the re-enactment of the former is deemed an oversight and ineffective. Lewis' Sutherland Statutory Construction, 2d Ed., ss 271, 281. This rule yields only to a contrary policy and intent clearly and unmistakably indicated by provisions of the Revision in pari materia Barring such, it is presumed that the intention was to re-enact the last expression of the Legislature on the subject.'

[16] The entire legislative scheme is to provide a review of assessment valuations, on appeal of either the taxpayer or taxing district, first in the County Board, and secondly in the State body. This was the holding of the former Supreme Court in Kenilworth v. Board of Equalization, Sup.1909, 78 N.J.L. 302, 72 A. 966, in which case the Court was construing Section 10 of the County Board Act of 1906. This section

is the source of R.S. 54:2—35, N.J.S.A., which, as said, respondent contends gave it the right of appeal direct to the Division of Tax Appeals and upon which the Court below relied.

There are two unreported former Supreme Court decisions, Pusey and Jones Co. v. State Board, Sup.1921 and Scott v. Board of Equalization of Taxes, Sup.1913, which repudiate the possibility of a direct appeal to the Division of Tax Appeals without an intervening appeal first to the County Board.

If R.S. 54:2—35, N.J.S.A., gave the right of appeal direct to the Division of Tax Appeals then R.S. 54:3—21, N.J.S.A., a later enactment, is a useless piece of legislation, for if there is available to either a taxpayer or a taxing district such a direct review then either party could by-pass the County Board and destroy its function of exercising its appellate capacity and thus nullify the progressive theme of the Tax Act.

[17] This leads us to the conclusionm that the respondent township had no right of appeal direct to the Division of Tax Appeals; that this tribunal had only jurisdiction to review action by the County Board of Taxation sitting in its appellate capacity; that the judgment of the Supreme Court as to the 1945 assessment must be reversed and that of the ***167** division of Tax Appeals affirmed. The valuation for that year is therefore $940,000.

Nos. A-129, A-130:

For affirmance: Chief Justice VANDERBILT and Justices CASE, HEHER, OLIPHANT, WACHENFELD, BURLING and ACKERSON—7.

For reversal: None.

No. A-128:

For reversal: Chief Justice VANDERBILT and Justices CASE, HEHER, OLIPHANT, WACHENFELD, BURLING and ACKERSON—7.

For affirmance: None.

All Citations

2 N.J. 157, 65 A.2d 828

16 N.J.Tax 58
Tax Court of New Jersey

PRUDENTIAL INSURANCE COMPANY OF AMERICA, PLAINTIFF, v. TOWNSHIP OF **PARSIPPANY**–TROY HILLS, DEFENDANT.

Decided June 28, 1995.

Synopsis

SYNOPSIS

Hotel owner appealed township's real property tax assessments. The Tax Court, Hamill, J.T.C., held that revenue achieved by **hotel** was indicative of its economic rent.

Ordered accordingly.

Judgment affirmed, 16 N.J.Tax 148.

West Headnotes (4)

[1] **Taxation** Capitalized income

In using direct capitalization method for calculating value of **hotel** for property tax purposes in which single net income figure is capitalized in perpetuity to determine value, calculation of stabilized revenue and stabilized net income is necessary.

9 Cases that cite this headnote

[2] **Taxation** Capitalized income

In order to determine **hotel's** stabilized room revenue when valuing **hotel** pursuant to income approach for real property tax purposes, it is necessary to know number of rooms, average daily room rate and occupancy rate.

5 Cases that cite this headnote

[3] **Taxation** Capitalized income

Revenues achieved by particular **hotel** are indicative of economic rent for real property tax purposes in absence of evidence of poor management.

2 Cases that cite this headnote

[4] **Taxation** Matters considered and methods of valuation in general

Value of real property for tax purposes must be based on what was known or anticipated on assessing date.

1 Cases that cite this headnote

Attorneys and Law Firms

***59** *Frank E. Furruggia* for plaintiff (*McCarter & English,* attorneys).

Louis P. Rago for defendant (*Weiner Lesniak,* attorneys).

Opinion

HAMILL, J.T.C.

Plaintiff Prudential Insurance Company of America appeals the 1993 and 1994 local property tax assessments on Block 202, Lot 3.9 in **Parsippany**–Troy Hills Township. The property is the **Parsippany** Hilton located at 1 Hilton Court. For both years, the property was assessed at $25,829,800. With application of the Chapter 123 ratios (54.54% for 1993 and 56.4% for 1994), the indicated equalized value was in excess of $47 million for 1993 and was somewhat less than $46 million for 1994. Plaintiff maintains that the true value of the property as of the relevant assessing dates was $21,545,000 for 1993 and $25,416,000 for 1994. Defendant maintains that the true value was $32,018,000 for 1995 and was $33,315,000 for 1994.

The property is what is known as a full service, first tier **hotel**. It is located on 15.76 acres. Built in 1981, the **hotel** has 508 guest rooms, four restaurants, a 10,000 square foot ballroom, 20 meeting rooms, indoor and outdoor pools and other recreational facilities, a gift shop, laundry facilities, and a game room. It is located within the Prudential business campus. Included within the immediate area are approximately five million square feet of first class office space. The property is located on the north side of Route 10 approximately two miles west of Interstate Route 287 and one

third of a mile east of Route 202. Interstate Route 80 is also nearby. Due to its location, the property caters primarily to business travelers.

From the opening of the **hotel** in 1981 to September 1991, Hilton **Hotels** managed the property. In 1991 Prudential changed management but retained the Hilton name, Hilton reservation service, and Hilton supervision. In return, Hilton receives franchise fees amounting to 5% of gross revenues. Beginning in late 1991, Prudential employed Interstate Management Company to ***60** manage the **hotel**. Under the management agreement entered into in September 1991, Interstate receives a management fee of 3% of gross income and an incentive bonus of 20% of net income. The parties stipulated that Interstate is an expert **hotel** management firm.

There were many points of agreement between the parties.

They agreed that the highest and best use of the property is its current use. They further agreed that the income approach is the best approach for valuing a **hotel** because this approach replicates a **hotel** investor's analysis. In developing the income approach, both appraisers followed the methodology of Stephen Rushmore to determine net operating income and to eliminate income not attributable to the real estate, *i.e.,* income attributable to personal property and to business value. Stephen Rushmore and Karen E. Rubin, *The Valuation of **Hotels** and Motels for Assessment Purposes 1984 The Appraisal Journal,* 270. Finally, there was little, if any, disagreement concerning expenses as a percentage of gross revenues.

The parties' major points of disagreement were (1) the appropriate stabilized room revenue, (2) appropriate capitalization rate, and (3) appropriate figure for the return on furniture, fixtures, and equipment. Of these items, the most significant was the appropriate stabilized room revenue.

[1] A determination of stabilized revenue and ultimately stabilized net income is necessary because, in the direct capitalization method, a single net income figure is capitalized in perpetuity to determine value. "The stabilized net income is intended to reflect the anticipated operating results of the **hotel** over its remaining economic life, given any or all applicable stages of buildup, plateau, and decline in the life cycle." Rushmore and Rubin, *supra* at 274.

[2] In order to determine stabilized room revenue, it is necessary to know (1) the number of rooms (here 508), (2) the average daily room rate, and (3) the occupancy rate. Although in agreement as to the number of rooms, the parties sharply disagreed as ***61** to the average daily room rate and the occupancy rate. According to plaintiff, the average daily room rate for tax year 1993 was $82 and for tax year 1994 was $84. Defendant maintained that the average daily rate for both years should be stabilized at $90. According to plaintiff the occupancy rate was 60% for tax year 1993 and 63% for tax year 1994. Defendant maintained that the occupancy rate for both years should be stabilized at 65%.

Both appraisers developed their average daily room rates and occupancy rates using the subject's actual room and occupancy rates as well as the room rates and occupancy rates of allegedly comparable **hotels**.

The subject's actual average daily room rates averaged nearly $92 during the period 1986–1990, with a low of $85 during 1988. In 1991, the average daily room rate dropped to approximately $85, dropped to $81 in 1992, was $82 in 1993, and increased to $84.50 in 1994.

Both appraisers agreed that the period 1991–1993 saw a "bottoming out" of the **hotel** market. The question was how far above the bottom of the market should the stabilized average daily room rate be placed for the 1993 and 1994 tax years. There was no dispute that the competing **hotels** as a group achieved average daily rates in the $90 and above level. The $90 figure holds true whether the competing **hotels** are limited to the immediate area without regard to whether a particular **hotel** is full service, as proposed by plaintiff's expert, or whether the competition is limited to full service **hotels** without regard to proximity, as proposed by defendant's expert. Plaintiff maintained that the subject could not obtain a $90 average rate because, at over 500 rooms, it is significantly larger than its competition and therefore must offer more rooms at reduced rates to achieve acceptable occupancy levels. Additionally, according to plaintiff, the subject is older than most of the **hotels** with which it competes for business guests.

As to occupancy rates, although the occupancy rates of the subject may have reached 65% for at least one year in the period 1986–1990, during the period 1991 through 1992, they were in the ***62** realm of 53%, increased to 60% in 1993, and increased to approximately 65.5% in 1994. Occupancy rates for the subject's competition were higher, ranging between approximately 59% in 1991 to 68.5% in 1993. Plaintiff explained the lower occupancy rates of the

subject as compared to its competition again on the basis of the fact that the subject is a much larger **hotel** and is older than most of its competition.

Defendant's explanation for the discrepancy in average daily room rates and occupancy rates between the subject and its competition was that there was a change in management of the subject in 1991, and that immediately after the change, management was not able to maintain the same levels as its competition. Defendant argued that the value of the subject should be based on the relevant market, *i.e.,* the rates of competing **hotels**, because otherwise the value of the real estate would vary depending upon the quality of **hotel** management, a result that would be inconsistent with the Uniformity Clause.

[3] While defendant may be correct as a general proposition, this court has concluded that, insofar as the valuation of **hotels** is concerned, the value of the real estate is in part attributable to management. Unless there is some indication of poor management (and in this case there is none), the revenues achieved by a particular **hotel** are indicative of economic rent. [*See* *Westmount Plaza v. **Parsippany** Troy Hills Tp.,* 11 *N.J.Tax* 127, 134–35 (Tax 1990) (finding that operation revenues of the **hotel**, after stabilization and adjustment are prima facie economic rent);] *Glenpointe Assocs. v. Teaneck Tp.,* 10 *N.J.Tax* 380, 390 (Tax 1989), *aff'd per curiam,* 12 *N.J.Tax* 118 (App.Div.1990). Additionally, plaintiff offered a plausible explanation for the lower average daily room rates and occupancy rates of the subject. The subject has 508 rooms and was built in 1981. Its nearest competitor, the Hanover Marriot, at 353 rooms, is smaller and thus easier to fill, and is somewhat newer, having been built in 1986. The rooms available in the other nearby business **hotels** ranged from 149 to 383 and, with the exception of the Madison **Hotel**, all were built subsequent to 1981. Moreover, defendant's comparable New Jersey **hotels** ***63** were, in part, located at some distance from the subject and its surrounding office space and business parks, and would not have been in competition with the subject for a business traveler.

Defendant's additional support for an average daily room rate of $90 and an occupancy rate of 65% was a national survey by Pannell, Kerr & Forster ("PKF") for calendar year 1992. The PKF report showed an average daily room rate of $89.71 and an occupancy rate of 71.2% for first tier, metropolitan area **hotels**. I cannot accept these figures based on a nationwide survey of **hotels** because they do not show rates in the North Jersey market where the subject is located. **Hotel** rates clearly fluctuate from one area of the country to another. [1] Furthermore, no definition of "metropolitan area" as used in the PKF report was offered, and it is questionable whether first tier **hotel** rates in **Parsippany**–Troy Hills can be equated with rates in major metropolises such as New York City.

On the other hand, I agree with defendant that the years 1991 and 1992 were the bottom of the market, that the subject's occupancy and daily room rates were particularly low in the 1991 through 1993 years, and that they should be stabilized at a single figure for both tax years.

As defined by the Appraisal Institute in the *The Appraisal of Real Estate* (10th ed. 1992), to which defendant's appraiser referred, "[s]tabilized occupancy or income is defined as occupancy or income at that point in time when abnormalities in supply and demand or any additional transitory conditions cease to exist and the existing conditions are those expected to continue over the economic life of the property." *Id.* at 320–21. *See also The Dictionary of Real Estate Appraisal* (3d ed. 1989) 285 (defining "stabilized income," and "stabilized occupancy,") to which defendant's counsel referred in closing argument.

***64** When the "transitory conditions" of the 1991–1992 period, *i.e.,* the bottom of the **hotel** market, are eliminated, it appears that an appropriate average daily room rate for the subject is $85, and an appropriate occupancy rate is 63% [for both tax years].

[4] A stabilized average daily room rate of $85 is justified by the fact that in 1988, prior to the steep downturn in the **hotel** market, the subject achieved a rate of $85, and that in 1994, just after the downturn, the rate again was approximately $85. I am mindful that value should be based on what was known or anticipated on the assessing date. *City of New Brunswick v. Division of Tax Appeals,* 39 *N.J.* 537, 545, 189 *A.*2d 702 (1963). Although 1994 post-dates both assessing dates, in this case the 1994 room rate is corroborative of the 1988 rate that preceded the assessing dates. *See* *Fort Lee Bor. v. Invesco Holding Corp.,* 3 *N.J.Tax* 332, 342 (Tax 1981), *aff'd in part, rev'd in part on other grounds,* 6 *N.J.Tax* 255 (App.Div.), *certif. denied,* 94 *N.J.* 606, 468 *A.*2d 238 (1983); (stating that "[w]hile the use of subsequent events as direct evidence of value is not appropriate, a valuation predicated upon subsequent events may, in an appropriate situation, be

utilized to corroborate an opinion independently arrived at and based on facts known or reasonably ascertainable of the critical date". *Stanford Enter. v. City of East Orange,* 1 *N.J.Tax* 317, 324 (Tax 1980) (stating that "[w]hether such subsequent events, when offered in conjunction with evidence known or reasonably anticipated as of the assessing date, are used in corroboration or as direct evidence is more theoretical than real"). Given the higher average daily room rates in the 1986–1990 period and the slight upturn in rates between 1992 and 1993, an investor reasonably could have anticipated an $85 average daily room rate as of October 1, 1992 and October 1, 1993, the assessing dates for the years in question. Although the average daily room rate averaged nearly $92 during the years 1986–1990, I am not convinced that in future years the subject will be able to achieve anywhere near this rate. Defendant did not provide the actual ***65** rates for 1989 and 1990, and the rate was only $85 in 1988 and close to $85 in 1994.

I believe that the subject's stabilized occupancy rate should be no higher than 63% because defendant's testimony was vague as to the occupancy rate for the period 1986–1990. At one point defendant's expert stated that the rate for that period did not exceed 65%, and at another point he stated that the rate was in the 60% category. Although the rate jumped to nearly 65% for the 1994 calendar year, 1994 post-dates the two assessing dates, and use of the 1994 occupancy rate again raises a question about what an investor could have known or anticipated on the assessing dates. *New Brunswick v. Division of Tax Appeals, supra,* 39 *N.J.* at 545, 189 *A.*2d 702. While I would be inclined to use the 1994 rate to corroborate a rate of 65% that predated the relevant assessing dates, I cannot do so because, as I have said, I cannot be certain from defendant's testimony that the occupancy rate was consistently at least 65% in the 1986–1990 period.

Turning to the return on furniture, fixtures, and equipment, I accept defendant's view that the base to which a capitalization rate is to be applied should be the actual depreciated book value of the personal property, which defendant determined to be $2,754,352. Plaintiff used a base figure of $3,810,000, derived from the Marshall & Swift cost manual and a depreciation rate of 50%, but this appears to have been due simply to the fact that plaintiff was unable to obtain the actual depreciated book value of the personal property. Plaintiff's Appraisal Report at 47. [2] There was no dispute that the capitalization rate for the real estate was to be used in determining the return on personal property.

The remaining point of dispute between the parties was the capitalization rate. Using data from the Investment Bulletins of the American Council on Life Insurance ("ACLI"), plaintiff's appraiser determined an overall capitalization for both years of 10.5%. The appraiser conceded that there was no data for 1993 to be used in determining a 1994 tax value, so he simply used the ***66** rate determined for the preceding year. Defendant proposed an overall rate of 9.31% for the 1993 tax year and a rate of 8.72% for the 1994 tax year.

Defendant maintained that the ACLI data should not be used because the data is not based on actual sales, but rather on real estate loans, and that other sources provide more accurate data. The difficulty with defendant's argument is that none of the expert's data appear to be indicative of capitalization rates for **hotels** and, to the extent that the data are relevant at all, they appear to support a capitalization rate in the range of 10%. In view of this court's acceptance of the ACLI data as a source for capitalization rates, I conclude that the ACLI tables provide an appropriate guideline in this case. *See* *Glenpointe Assocs., supra,* 10 *N.J.Tax* at 394–96 (taking judicial notice of ACLI data and finding it "widely disseminated, readily available and frequently relied upon by professionals in the local property tax field"). *See also Double R. Enter. v. City of East Orange,* 13 *N.J.Tax* 54, 66 (Tax 1993) (referring to ACLI data); *Purex Corp. v. City of Paterson,* 8 *N.J.Tax* 121, 131 (Tax 1986) (deeming ACLI data as "acceptable authority" for the rendering of expert opinion).

Due to the high quality of the subject property and the beginning of an upswing in the **hotel** industry starting in 1993, I conclude that a capitalization rate of 10% for both years is appropriate. Although less than the ACLI indicated rate for the third quarter of 1992 and less than the plaintiff's rate, a 10% rate takes into account the quality of the subject's facilities and location, as well as the improvement in the subject's average daily room and occupancy rates in 1993, particularly its occupancy rate. At the same time, the 10% rate reflects the fact that, compared to its competition, the subject is a substantially larger and somewhat older **hotel**.

While defendant may be correct that mortgage interest rates were lower as of October 1, 1993 than they were in October 1, 1992, and that equity dividend rates were also dropping during this period, the absence of **hotel** data for the third quarter of 1993, both in plaintiff's and defendant's reports and testimony, makes it ***67** impossible to corroborate this hypothesis. In fact, the absence of **hotel** loans during the

latter period suggests that the **hotel** market may have only just begun to improve during 1993. I therefore conclude that the capitalization rate should remain the same for the two tax years at issue.

To be added to the capitalization rate for each year is the effective tax rate. During the course of the trial, the parties agreed that the actual tax rate for 1993 was 3.62% and for 1994 was 3.85%. When the Chapter 123 ratios (54.54% for 1993 and 56.4% for 1994) are applied to the actual tax rate for each year, the effective tax rate for 1993 is 1.97% and for 1994 is 2.17%. The resulting overall capitalization rate, including the effective tax rate, is thus 11.97% for 1993 and 12.17% for 1994.

Applying the above conclusions with respect to average daily room rate, occupancy rate, return on personal property, capitalization rate, and effective tax rate, I find as follows:

room revenue for both years (508 x $85 x 63% x 365)	$9,929,241
gross revenue assuming room revenue equals 52% of gross revenue	19,094,694
gross profit at 51.78% of gross revenue	9,887,233 [3]
undistributed operating expenses at 27.6% of gross revenue	5,270,136 [4]
insurance at 1% of gross revenue	190,947
management fee at 3% of gross revenue	572,841
return of personal property at 2% of gross revenue	381,894
return on personal property ($2,754,352 x 10%)	275,435
total deductions from gross profit	6,691,253
net operating income	3,195,980
capitalized at 11.97% for 1993	26,699,916
capitalized at 12.17% for 1994	26,261,134.

***68** As the ratio of assessed value to true value of the property exceeds the upper limit of the Chapter 123 corridor for both years, the assessed value must be reduced by applying the Chapter 123 ratio to true value. When this is done, the assessed value for 1993 is reduced to $14,562,100 rounded, and the assessed value for 1994 is reduced to $14,811,300 rounded.

On the assumption that the land value should remain constant, the revised assessments, broken down between land and improvements are:

	1993	1994
Land	$1,576,000	$1,576,000
Improvements	12,986,100	13,235,300

Total	$14,562,100	$14,811,300

The court will enter judgments accordingly.

All Citations

16 N.J.Tax 58

Footnotes

1 This fact is corroborated in the Arthur Andersen *Host Report* included in the addenda to defendant's appraisal report.

2 Plaintiff's report states that the figure was derived from a publication of the Hospitality Market Data Exchange, but plaintiff's appraiser testified that he derived the cost new of the personal property from Marshall & Swift.

fn3 51.78% is the average between plaintiff's percentage of 51.32% and defendant's figure of 52.2%.

fn4 I have used defendant's figure of 27.6% for operating expenses as a percentage of total income. Plaintiff's and defendant's figures are close, but plaintiff's presentation is confusing and contains discrepancies between the stated dollar total and the stated percentage total.

2021 WL 4167094 (N.J.Tax)
Only the Westlaw citation is currently available.

Tax Court of New Jersey.

GREEN EAGLE PROPERTY RESOURCES, LP
v.
MANSFIELD TOWNSHIP

Docket Nos. 009897-2014, 003285-2015, 002372-2016, 001715-2017, and 004237-2018
|
September 13, 2021

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Opinion

Joshua D. Novin, Judge

***1** This letter constitutes the court's opinion following trial of the local property tax appeals filed by plaintiff, Green Eagle Property Resources, LP ("Green Eagle"). Green Eagle challenges the 2014, 2015, 2016, 2017, and 2018 tax year assessments on its improved property located in Mansfield Township ("Mansfield").

For the reasons stated more fully below, the court reduces the 2014, 2015, 2016, 2017, and 2018 local property tax assessments.

I. Procedural History and Factual Findings

Pursuant to R. 1:7-4, the court makes the following findings of fact and conclusions of law based on the evidence and testimony introduced during trial.

As of the valuation dates, Green Eagle was the owner of the property located at 1885 State Route 57, Mansfield Township, Warren County, New Jersey (the "subject property"). The subject property is identified on Mansfield's municipal tax map as Block 1105, Lot 12.01.

As of the valuation dates at issue, the subject property was improved with a one-story community shopping center, built in or about 2000, commonly known as Mansfield Commons.[1] The shopping center is divided into two separate buildings. The first building, located along the western boundary of the subject property, is a masonry one-story Walmart comprising approximately 123,519 square feet ("Building One"). The second building comprises approximately 145,627 square feet and includes three large retail stores, an 88,830 square foot Kohl's department store, a 21,674 square foot Marshalls department store, and a 15,000 square foot Party City store ("Building Two"). Building Two also includes eleven smaller "in-line" retail stores ranging in size from 1,200 to 4,000 square feet. Adjacent to Building Two on the subject property's eastern boundary, is an Arby's fast-food restaurant, comprising approximately 2,900 square feet. The Arby's restaurant is included in Building Two's total square footage. Thus, the subject property contains a total of 272,046 square feet of leasable area, inclusive of the Arby's restaurant.

Although the subject property comprises a single lot of approximately 36.6-acres, Building One is allocated approximately 15.76 acres of the real property, and Building Two and the restaurant pad site are allocated approximately 20.84 acres of the real property. During trial, Green Eagle described the two buildings in the shopping center as one economic unit, while Mansfield characterized the buildings as having a synergistic nature.

***2** The subject property is located at the intersection of Route 57 and Airport Road in Mansfield. The property contains approximately 2,331 feet of frontage along State Route 57, and a depth of approximately 691 feet, and is level at street grade. The site is serviced by public utilities, including municipal sewer and water, natural gas, electric, and telephone. The subject property is in Flood Hazard Zone C, denoting an elevation "higher than the elevation of the 0.2-percent-annual-chance flood."[2]

The subject property is situated in Mansfield's B-2 – Business District with permitted uses that include retail sales establishments, offices, office buildings, indoor recreational facilities, hotels and motels, and municipal buildings operated for public purposes. Thus, operation of a community

shopping center on the subject property is a legally conforming use.

Green Eagle timely filed complaints challenging the subject property's 2014, 2015, 2016, 2017, and 2018 tax year assessments. The court tried the matters to conclusion over several days.

During trial, testimony was elicited from one of Green Eagle's principals, John Orrico. In addition, Green Eagle and Mansfield each offered testimony from New Jersey certified general real estate appraisers, who were accepted by the court, without objection, as experts in the field of real property valuation. Each expert prepared an appraisal report containing photographs of the subject property and expressing opinions of the subject property's true value as of the October 1, 2013, October 1, 2014, October 1, 2015, October 1, 2016, and October 1, 2017 valuation dates.

As of each valuation date, the subject property's local property tax assessment, implied equalized value, and the experts' value conclusion are set forth below:

Valuation date	Tax Assessment	Average ratio of assessed to true value	Implied equalized Value	Green Eagle's expert	Mansfield's expert
10/1/2013	$33,190,600	100%	$33,190,600	$25,500,000	$47,880,000
10/1/2014	$33,190,600	96.21%	$34,498,077	$25,800,000	$48,240,000
10/1/2015	$33,190,600	94.67%	$35,059,258	$25,800,000	$48,290,000
10/1/2016	$33,190,600	94.14%	$35,256,639	$25,800,000	$48,460,000
10/1/2017	$33,190,600	92.62%	$35,835,241	$25,800,000	$48,390,000

Prior to the commencement of trial, Green Eagle and Mansfield stipulated several issues.[3] Additionally, during trial, Green Eagle and Mansfield stipulated the replacement cost new of Building One, inclusive of a 10% entrepreneurial profit, and 15% physical depreciation, under the cost approach. Green Eagle and Mansfield further amended their stipulation, agreeing that the subject property has 1,395 parking spaces, with 615 parking spaces being allocated to Building One.[4] At the outset, the court finds that the parties stipulated value of $1,492 per parking space is reasonable. Therefore, the net value of the 615 parking spaces allocated to Building One should be $917,580 (615 parking spaces x $1,492 per parking space = $917,580).

***3** Thus, three central issues remain in dispute between Green Eagle and Mansfield: (i) what is (are) the appropriate approach(es) to value the subject property, and what is the subject property's true value under that (those) approach (es); (ii) if employing a hybrid approach to value the subject property (part cost approach and part **income** capitalization approach), what amount, if any, should be attributable to the alleged functional obsolescence of Building One under the cost approach; and (iii) if employing a hybrid approach to value the subject property (part cost approach and part **income** capitalization approach), what is the appropriate method to determine the value of the land lying beneath Building One under the cost approach.

During trial, Green Eagle offered testimony from John Orrico, President of National Realty and Development Corp. ("National Realty"), and owner of Green Eagle. In his capacity as President of National Realty, Mr. Orrico is responsible for overseeing the management and operations of National Realty, including but not limited to leasing, construction/development, and legal matters. National Realty manages approximately seventy properties in fourteen states, comprising more than 20,000,000 square feet of shopping centers, with the balance comprising office buildings, warehouses, and residential complexes. In Mr. Orrico's estimation, Mansfield is one of the smallest markets that National Realty maintains a community shopping center. National Realty also owns and manages other community shopping centers in New Jersey, including centers located in Manville (Somerset County), Pohatcong (Warren County), Clinton (Hunterdon County), Shrewsbury (Monmouth County), and Holmdel (Monmouth County).

According to Mr. Orrico, the anchor tenants are the "drivers" of traffic to shopping centers. Typically, a landlord will first

secure an anchor tenant(s), followed by the in-line tenants. As a result, the in-line tenant leases are usually tied to the anchor tenants' lease and occupancy. Thus, if an anchor tenant vacates or its store goes dark, the in-line tenants may have options to reduce the rent payable or terminate their lease. These provisions are what are commonly referred to as cotenancy clauses. [5]

Mr. Orrico further testified that Walmart's tenancy in Building One arose under a ground lease. National Realty owns the land and afforded Walmart the right to use the land and construct a building thereon to Walmart's specifications. Walmart owns the building and is solely responsible for structural repairs to and maintenance of the building. Upon expiration of the ground lease, the improvements revert to National Realty.

Based on Mr. Orrico's experience, prior lease negotiations, and approximately ten lease transactions that National Realty has entered into with Walmart, including several locations in New Jersey, Walmart wants to equip its stores with a grocery component to offer an additional customer draw and revenue source. [6] , [7] As a result, Walmart has generally sought to either reconfigure or enlarge its existing stores, or to transition to a larger "Super Stores" footprint, to offer that grocery component. In Mr. Orrico's experience, the Walmart "Super Stores" offering a grocery component are 160,000 to 190,000 square feet, with the grocery component occupying 35,000 to 40,000 square feet. Here, Building One comprises approximately 123,519 square feet, and in Mr. Orrico's opinion, does not meet Walmart's current specifications for a "Super Store."

I. Conclusions of Law

A. Presumption of Validity

***4** "Original assessments and judgments of county boards of taxation are entitled to a presumption of validity." MSGW Real Estate Fund, LLC v. Mountain Lakes Borough, 18 N.J. Tax 364, 373 (Tax 1998). "Based on this presumption, the appealing taxpayer has the burden of proving that the assessment is erroneous." Pantasote Co. v. Passaic City, 100 N.J. 408, 413 (1985). "The presumption of correctness ... stands, until sufficient competent evidence to the contrary is adduced." Little Egg Harbor Twp. v. Bonsangue, 316 N.J. Super. 271, 285-86 (App. Div. 1998). A taxpayer can only rebut the presumption by introducing "cogent evidence" of true value. See Pantasote Co., 100 N.J. at 413. That is, evidence "definite, positive and certain in quality and quantity to overcome the presumption." Aetna Life Ins. Co. v. Newark City, 10 N.J. 99, 105 (1952). Thus, at the close of the taxpayers' proofs, the court must be presented with evidence that raises a "debatable question as to the validity of the assessment." MSGW Real Estate Fund, LLC, 18 N.J. Tax at 376.

In evaluating whether the evidence presented meets the "cogent evidence" standard, the court "must accept such evidence as true and accord the plaintiff all legitimate inferences which can be deduced from the evidence." Id. at 376 (citing Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995)). The evidence presented, when viewed under the Brill standard "must be 'sufficient to determine the value of the property under appeal, thereby establishing the existence of a debatable question as to the correctness of the assessment.' " West Colonial Enters, LLC v. East Orange City, 20 N.J. Tax 576, 579 (Tax 2003) (quoting Lenal Properties, Inc. v. City of Jersey City, 18 N.J. Tax 405, 408 (Tax 1999), aff'd, 18 N.J. Tax 658 (App. Div. 2000)). "Only after the presumption is overcome with sufficient evidence ... must the court 'appraise the testimony, make a determination of true value and fix the assessment.' " Greenblatt v. Englewood City, 26 N.J. Tax 41, 52 (Tax 2011) (quoting Rodwood Gardens, Inc. v. Summit City, 188 N.J. Super. 34, 38-39 (App. Div. 1982)). Hence, even in the absence of a motion to dismiss under R. 4:37-2(b), the court is nonetheless required to determine if the party challenging the tax assessment has overcome the presumption of validity. If the court concludes that a challenging party has not carried the requisite burden, dismissal of the action is warranted under R. 4:40-1 and the trial court need not engage in an evaluation of the evidence to make an independent determination of value.

At the close of Green Eagle's proofs, Mansfield moved to dismiss these matters under R. 4:37-2(b). Affording Green Eagle all reasonable and legitimate inferences which could be deduced from the evidence presented, the court concluded that Green Eagle produced cogent evidence sufficient to overcome the presumption of validity. The opinions of Green Eagle's expert, if accepted as true, raised debatable questions as to the validity of the subject property's tax assessments. Accordingly, the court denied Mansfield's motion and placed a statement of reasons on the record.

However, concluding that the presumption of validity has been overcome does not equate to a finding by the court that a local property tax assessment is erroneous. Once the presumption has been overcome, "the court must then turn to a consideration of the evidence adduced on behalf of both parties and conclude the matter based on a fair preponderance of the evidence." Ford Motor Co. v. Edison Twp., 127 N.J. 290, 312 (1992). The court must be mindful that "although there may have been enough evidence [presented] to overcome the presumption of correctness at the close of plaintiff's case-in-chief, the burden of proof remain[s] on the taxpayer ... to demonstrate that the judgment [or local property tax assessment] under review was incorrect." Id. at 314-15 (citing Pantasote Co., 100 N.J. at 413).

B. Highest and Best Use

***5** "For local property tax purposes, property must be valued at its highest and best use." Entenmann's Inc. v. Totowa Borough, 18 N.J. Tax 540, 545 (Tax 2000). The determination of the highest and best use of a property is "the first and most important step in the valuation process." Ford Motor Co. v. Edison Twp., 10 N.J. Tax 153, 161 (Tax 1988), aff'd, 127 N.J. 290 (1992). The highest and best use analysis involves the "sequential consideration of the following four criteria, determining whether the use of the subject property is: 1) legally permissible; 2) physically possible; 3) financially feasible; and 4) maximally productive." Clemente v. South Hackensack Twp., 27 N.J. Tax 255, 267-269 (Tax 2013), aff'd, 28 N.J. Tax 337 (App. Div. 2015).

Here, Green Eagle and Mansfield stipulated, and the court agrees, that the highest and best use of the subject property as vacant and as improved, is as a community shopping center.

C. Valuation

"There is no single determinative approach to the valuation of real property." 125 Monitor Street LLC v. City of Jersey City, 21 N.J. Tax 232, 237-238 (Tax 2004) (citing Samuel Hird & Sons, Inc. v. City of Garfield, 87 N.J. Super. 65, 72 (App. Div. 1965)); see also ITT Continental Baking Co. v. East Brunswick Twp., 1 N.J. Tax 244, 251 (Tax 1980). "There are three traditional appraisal methods utilized to predict what a willing buyer would pay a willing seller on a given date, applicable to different types of properties: the comparable sales method, capitalization of **income** and cost." Brown v. Borough of Glen Rock, 19 N.J. Tax 366, 376 (App. Div. 2001), certif. denied, 168 N.J. 291 (2001) (citation omitted)). The "decision as to which valuation approach should predominate depends upon the facts of the particular case and the reaction to these facts by the experts." Coca-Cola Bottling Co. of New York v. Neptune Twp., 8 N.J. Tax 169, 176 (Tax 1986) (citing New Brunswick v. State Div. of Tax Appeals, 39 N.J. 537, 544 (1963)); see also WCI-Westinghouse, Inc. v. Edison Twp., 7 N.J. Tax 610, 619 (Tax 1985). However, when the proofs submitted in support of one approach overshadow those submitted in support of any other approach, the court may conclude which approach should prevail. ITT Continental Baking Co. v. East Brunswick Twp., 1 N.J. Tax 244; Pennwalt Corp. v. Holmdel Twp., 4 N.J. Tax 51 (Tax 1982).

Here, Green Eagle's expert primarily relied on and found the **income** capitalization approach the most credible method of deriving the subject property's true value. Conversely, Mansfield's expert employed a hybrid method, employing the cost approach, to determine a value for Building One, the sales comparison approach to determine a value for the land beneath Building One, and employing the **income** capitalization approach, to determine a value for Building Two and the restaurant pad site. Although Green Eagle's expert found it to be a less reliable valuation method, he also employed a hybrid approach to value the subject property, using the cost approach to value Building One and the **income** capitalization approach to value Building Two, the restaurant pad site, and the land. Thus, the critical difference between the experts' hybrid approaches involved how they arrived at a value for the land beneath Building One.

For the reasons expressed herein, the court agrees with the conclusion reached by Green Eagle's expert, finding that the **income** capitalization approach is best suited for determining the subject property's true value. The court recognizes that a hybrid methodology (part **income** capitalization approach and part cost approach) may be used to derive the true or fair market value of a property. See Livingston Mall Corp. v. Livingston Twp., 15 N.J. Tax 505, 508-09 (Tax 1996) (valuing three ground leased anchor stores under the cost approach and valuing the non-anchor stores and concourse under the **income** capitalization approach); Aliotta v. Belleville Twp., 27 N.J. Tax 419, 427 (Tax 2013) (concluding that a "hybrid

valuation approach is reasonable because of the subject's unique uses"). However, for the reasons set forth herein, the court finds that the hybrid approaches employed by the experts present unique challenges and obstacles in arriving at an accurate value for the land beneath Building One, rendering its usefulness suspect.

***6** Here, credible testimony was elicited in the record from Mr. Orrico and the experts that the subject property is **income**-producing. Moreover, as detailed by both Green Eagle's expert and Mansfield's expert, sufficient credible evidence exists in the marketplace to employ the **income** capitalization approach to derive the subject property's value. When a property is **income**-producing, the **income** capitalization approach is the "preferred method for estimating the value of **income** producing property." Forsgate Ventures IX, L.L.C. v. Twp. of South Hackensack, 29 N.J. Tax 28, 46 (Tax 2016), aff'd, 31 N.J. Tax 135 (App. Div. 2018). See Parkway Vill. Apartments Co. v. Cranford, 108 N.J. 266, 269 (1987) (concluding that "[t]he **income** method is generally preferred for assessing **income**-producing property"); TD Bank v. City of Hackensack, 28 N.J. Tax 363, 378 (Tax 2015); Shav Associates v. Middletown Twp., 11 N.J. Tax 569, 578 (Tax 1991).

Accordingly, the court will rely on the **income** capitalization approach to determine the subject property's true or fair market value.

1. **Income** Capitalization Approach

"The **income** capitalization approach to value consists of methods, techniques, and mathematical procedures that an appraiser uses to analyze a property's capacity to generate benefits (i.e., usually the monetary benefits of **income** and reversion) and convert these benefits into an indication of present value." The Appraisal of Real Estate, 439 (14th ed. 2013). See Parkway Village Apartments Co. v. Cranford Twp., 8 N.J. Tax 430 (Tax 1985), aff'd, 9 N.J. Tax 199 (App. Div. 1986), rev'd on other grounds, 108 N.J. 266 (1987); Helmsley v. Borough of Fort Lee, 78 N.J. 200 (1978); Hull Junction Holding Corp. v. Princeton Borough, 16 N.J. Tax 68 (Tax 1996).

Central to the **income** capitalization approach is "the determination of the economic rent, also known as the 'market rent' or 'fair rental value.' " Parkway Village Apartments Co., 108 N.J. at 270. The term market rent refers to "the most probable rent that a property should bring in a competitive and open market reflecting all **conditions** and restrictions of the lease agreement, including permitted uses, use restrictions, expense obligations, term, concessions, renewal and purchase options and tenant improvements." Appraisal Institute, The Dictionary of Real Estate Appraisal, 121-22 (5th ed. 2010). The economic or market rent allows an appraiser to accurately forecast the stream of **income** to be generated by a property and to convert that future benefit into a present value.

A. Market or Economic Rent

The term economic or market rent refers to "the most probable rent that a property should bring in a competitive and open market reflecting all **conditions** and restrictions of the lease agreement, including permitted uses, use restrictions, expense obligations, term, concessions, renewal and purchase options and tenant improvements." Appraisal Institute, The Dictionary of Real Estate Appraisal, 121-22 (5th ed. 2010). The economic or market rent attributable to a property may differ substantially from the actual rent derived on a property, which may be below market rates. Parkview Village Assocs. v. Collingswood Bor., 62 N.J. 21, 29-30 (1972). However, "this does not mean that the actual rent is to be disregarded ... 'in determining what is fair rental **income**, the actual rental **income**, while not controlling, is an element to be considered.' " McCrory Stores Corp. v. Asbury Park, 89 N.J. Super. 234, 243 (App. Div. 1965) (quoting Somers v. City of Meriden, 174 A. 184, 186 (Sup. Ct. Err. 1934)).

1. Green Eagle's expert

To compute economic rent, Green Eagle's expert first classified the subject property's tenancies into three distinct size categories: (i) "Big Box" or anchor stores, comprising 88,000 to 130,000 square feet (the Walmart and Kohl's); (ii) "Mid-Size" stores, comprising 15,000 to 20,000 square feet (the Marshall's and Party City); and (iii) in-line retail stores, comprising 1,200 to 4,000 square feet. Then, based on discussions with Mr. Orrico and his experience as an appraiser, Green Eagle's expert testified that generally, the "Big Box" or anchor tenants will pay the lowest rent in the shopping center because the anchor tenant drives business to the shopping center and serves as an attraction for other smaller tenants to occupy retail space in the shopping center.

Thus, the anchor tenant enjoys the most leverage to secure the lowest market rent.

a. Big Box or anchor

***7** Green Eagle's expert identified five retail leases of "Big Box" or anchor tenancies that he found comparable to the subject property. For purposes of his appraisal report, these leases were identified as comparable leases 1, 2, 3, 4, and 5. Three of the comparable leases were in National Realty owned community shopping centers, one in Manville (Somerset County), and two in Pohatcong (Warren County). The remaining two comparable leases were in Howell Township (Monmouth County). The comparable leases comprised leased areas of 42,430 to 164,387 square feet. [8] The leases bore commencement dates between May 2012 and July 2014. The unadjusted rents ranged from $5.25 to $11.50 per square foot. In determining the effective rent for the five comparable leases, Green Eagle's expert computed the average rent over the lease term. See First Republic Corp. of Am. v. East Newark Bor., 16 N.J. Tax 568, 578 (Tax 1997).

Green Eagle's expert applied a -5% location adjustment to comparable leases 1, 2, 3, 4, and 5. After analyzing New Jersey Department of Transportation traffic counts, he observed that the traffic counts of the comparable lease locations were between 40% to 70% higher than that of the subject property. Accordingly, he applied a "nominal" -5% location adjustment. In addition, Green Eagle's expert applied size adjustments of +5% to comparable lease 1, and -5% to comparable lease 5. Importantly, during cross-examination, in assessing whether a size adjustment was warranted to comparable lease 2 and comparable lease 3, despite these two retail stores being separate, distinct, and independent from each other, Green Eagle's expert acknowledged that he considered comparable lease 2 and comparable lease 3 as the same tenant.

After applying the adjustments, the adjusted rents of the five comparable leases ranged from $5.00 to $10.93 per square foot. After analyzing the adjusted rents, Green Eagle's expert concluded an economic or market rent of $8.50 per square foot for the "Big Box" or anchor retail space in the subject property. Green Eagle's expert applied the $8.50 per square foot economic rent to 212,349 square feet, comprising Building One (123,519 square feet) and the Kohl's in Building Two (88,830 square feet).

b. Mid-size

Green Eagle's expert then identified five retail leases of "Mid-Size" retail stores he found comparable to the subject property. His appraisal report identified those leases as comparable leases 6, 7, 8, 9, and 10. All five of the comparable leases were in National Realty owned community shopping centers, two in Manville (Somerset County), one in Shrewsbury (Monmouth County), one in Pohatcong (Warren County), and one in Holmdel (Monmouth County). The comparable leases comprised leased areas of 15,000 to 42,430 square feet. Two of the comparable leases were subject property leases (the Marshalls and the Party City leases). The leases bore commencement dates between January 2011 and May 2017. The unadjusted rents ranged from $9.00 to $12.46 per square foot. In determining the effective rent for the five comparable leases, Green Eagle's expert again computed the average rent over the lease term. See First Republic Corp. of Am., 16 N.J. Tax at 578.

Green Eagle's expert applied a -5% location adjustment to comparable leases 8, 9, and 10. Again, after analyzing New Jersey Department of Transportation traffic counts, Green Eagle's expert concluded that the traffic counts in these locations were superior to the subject property; accordingly, he applied a -5% location adjustment.

***8** After applying the adjustment, the adjusted rents of the five comparable "Mid-Size" leases ranged from $8.55 to $12.46 per square foot. After analyzing the adjusted rents, Green Eagle's expert concluded an economic or market rent of $11.00 per square foot for the "Mid-Size" retail space in the subject property. Green Eagle's expert applied the $11.00 per square foot economic rent to 36,674 square feet of the subject property's shopping center, comprising the Marshalls (21,674 square feet) and Party City (15,000 square feet) in Building Two.

c. Small, in-line

Finally, Green Eagle's expert identified three retail leases of in-line stores he found comparable to the subject property. Those leases were identified as comparable leases 11, 12, and 13 in his appraisal report. All three comparable leases were in Mansfield. The comparable leases comprised leased areas of 1,181 to 1,325 square feet. The leases bore commencement dates between December 2013 and November 2014. The

unadjusted rents ranged from $14.85 to $20.40 per square foot. In determining the effective rent for the five comparable leases, Green Eagle's expert again computed the average rent over the lease term. See First Republic Corp. of Am., 16 N.J. Tax at 578.

Green Eagle's expert applied no adjustments to comparable leases 11, 12, and 13. After analyzing the comparable in-line rents, Green Eagle's expert concluded an economic or market rent of $18.00 per square foot for the subject property's in-line retail space. Green Eagle's expert applied the $18.00 per square foot economic rent to 23,023 square feet of the subject property's in-line retail stores.

2. Mansfield's expert

Like Green Eagle's expert, Mansfield's expert classified the subject property's tenancies into three types: (i) anchor; (ii) "Junior anchor" or "mid-sized"; and (iii) in-line retail. [9] However, in Mansfield's expert opinion, the subject property had only one anchor tenant, the Walmart occupying Building One, which he separately valued using the cost approach. In Mansfield's expert's opinion, the Kohl's, Marshalls, and Party City were "Junior anchor" or mid-sized tenants. In Mansfield's expert's opinion, the "Junior anchor" or "mid-sized" retail space comprises stores greater than 15,000 square feet, and the in-line retail space comprises stores less than 15,000 square feet. Importantly, Mansfield's expert stated that although Building One and Building Two are not physically attached, a "synergy" exists between the two buildings.

a. Anchor

In Mansfield's expert's opinion, the subject property did not include any anchor tenants that should be valued under the **income** capitalization approach. Therefore, Mansfield's expert did not furnish the court with any comparable anchor tenant leases or conclude a market or economic rent attributable to an anchor tenant.

b. Junior anchor and mid-sized

Mansfield's expert identified four retail leases of "Junior anchor" or "mid-sized" stores he found comparable to the subject property. His appraisal report identified those leases as comparable leases 1, 2, 3, and 4. The leased locations were in Rockaway Township (Morris County), Randolph (Morris County), East Hanover (Morris County), and Totowa (Passaic County). The comparable leases comprised leased areas of 23,000 to 55,398 square feet. The leases bore commencement dates between June 2010 and January 2015. The unadjusted rents ranged from $16.20 to $19.50 per square foot. In determining the effective rent for the four comparable leases, Mansfield's expert also computed the average rent over the lease term. See First Republic Corp. of Am., 16 N.J. Tax at 578.

***9** Mansfield's expert applied a -15% adjustment for lease type to comparable lease 1. Comparable lease 1 was a modified gross lease compared to the subject property's leases and the other comparable leases, which were net leases. Thus, in Mansfield's expert's estimation, a -15% adjustment accounted for the expense difference between a net lease and a modified gross lease.

The adjusted rents of the four comparable leases ranged from $14.70 to $19.50 per square foot. After analyzing the adjusted rents, Mansfield's expert concluded an economic or market rent of $17.00 per square foot for the subject property's "Junior anchor" and mid-sized retail space. Mansfield's expert applied the $17.00 per square foot economic rent to Building Two's 125,504 square feet of retail space comprising the Kohl's, Marshalls, and Party City (88,830 + 21,674 +15,000 = 125,504 square feet). [10]

c. In-line

Mansfield's expert identified six retail leases of in-line stores that he found comparable to the subject property. Those leases were identified as comparable leases 5, 6, 7, 8, 9, and 10 in his appraisal report. Three of the comparable in-line leases were in Mansfield, and three were in Rockaway Township (Morris County). The comparable leases comprised leased areas of 1,296 to 7,011 square feet. The leases bore commencement dates between August 2012 and April 2015. The unadjusted rents ranged from $20.40 to $37.00 per square foot. In determining the effective rent for the six comparable leases, Mansfield's expert again computed the average rent over the lease term. See First Republic Corp. of Am., 16 N.J. Tax at 578.

Mansfield's expert applied no adjustments to comparable leases 5, 6, 7, 8, 9, and 10. After analyzing the rents, Mansfield's expert concluded an economic or market rent of $22.00 per square foot for the subject property's in-line retail space. Mansfield's expert applied the $22.00 per square foot economic rent to 23,023 square feet of the subject property's in-line retail stores.

3. Analysis

The court finds the experts' attempts to characterize or group the subject property's retail tenancies into specific classes or categories based almost purely on square footage is subjective. Just as no two snowflakes are alike, no two shopping centers can be said to be identical; each possesses unique and distinct characteristics, challenges, and attributes. Thus, the categorization of a retail store as mid-size, because it occupies 35,000 square feet, may be true in one center; however, in another center, a retail store occupying 35,000 square feet may be viewed as an anchor tenant. Accordingly, the court's focus is not on the size parameters employed by the experts to classify a retail footprint as an anchor or mid-sized. Rather, the court's focus is on comparing similarly sized retail stores located in similarly comprised community shopping centers and discerning the economic or market rent of the retail stores existing therein.

As detailed in Mr. Orrico's testimony and confirmed by the experts, anchor tenants generally occupy a large area of a community shopping center's retail footprint and are the primary attraction of customers to a shopping center. Therefore, they are the driving force of business to the center and possess greater negotiating power and pay lower rent than that charged mid-size or in-line retail tenants. Moreover, the identity of a shopping center's anchor tenant often can be confirmed by a review of the leases of the smaller, mid-sized or in-line tenants. If the smaller, mid-sized or in-line tenant leases contain cotenancy clauses, identifying one or more larger tenants in the shopping center, those larger tenants are viewed as anchor tenants. [11]

***10** Here, the testimony and evidence introduced during trial disclosed that the subject property's community shopping center is situated on an average-sized lot for the size of the building improvements. Consequently, it possesses a ratio of gross land area (1,594,296 square feet, or 36.6 acres), to building improvements (272,046 square feet), of 5.86 to 1. Stated differently, the building improvements occupy approximately 17% of the land area. The Walmart occupies approximately 45% of the retail area, Kohl's occupies approximately 33% of the retail area, Marshalls occupies approximately 8% of the retail area, Party City occupies approximately 5.5% of the retail area, and small, in-line retail tenants occupy the remaining 8.5%. According to Mr. Orrico, several of the subject property's leases contain contenancy provisions permitting them to vacate should Walmart or Kohls vacate. [12]

The court finds the testimony of Mr. Orrico credible, that not only does the subject property's owner view the Walmart and Kohl's as anchor tenants, but the subject property's mid-size and in-line retail tenants similarly view the Walmart and Kohl's as anchor tenants. Moreover, the court observes that the Walmart occupies approximately 45%, and the Kohl's occupies approximately 33% of the subject property's retail area. Thus, each store occupies material portions of the subject property's retail areas. Accordingly, the court finds that the Walmart and Kohl's are anchor tenants in the subject community shopping center and will apply an anchor economic rent to the 123,519 square feet occupied by the Walmart in Building One, and the 88,830 square feet occupied by the Kohl's in Building Two.

a. Anchor

The court's review of Green Eagle's expert's comparable leases 1, 2, 3, 4, and 5 disclose that each lease is in community shopping centers similarly sized to the subject, ranging from 225,000 to 294,000 square feet of gross leasable area. Moreover, each of the leases are in shopping centers having comparable ratios of land area to building: (i) 3.57 to 1; (ii) 7.42 to 1; and (iii) 5.61 to 1. Further, each shopping center was constructed within twenty years of one another and was of like age, material, quality, and **condition**. Thus, the court is satisfied that each of the comparable leases identified by Green Eagle's expert are in community shopping centers like the subject property's community shopping center.

Here, the testimony of Mr. Orrico was that the size/footprint of the Walmart and Kohl's, and their influence in the subject property's shopping center, rendered them anchor tenants. However, unlike the Walmart and Kohl's, that comprise 45% and 33% of the subject property's retail area, Green Eagle's expert's comparable leases 2, 3, and 5 comprise only 19.4%, 14.6%, and 21.3% of the retail areas in their respective shopping centers. Importantly, Green Eagle's expert did not

furnish testimony or evidence with respect to the influence or impact that comparable leases 2, 3, and 5 have in their respective shopping centers. During trial, no evidence was produced that the leases for the in-line retail tenants in those shopping centers contained cotenancy clauses affording them the right to vacate should the tenants occupying comparable lease 2, 3, and 5 vacate their stores. For these reasons, the court does find that Green Eagle's expert's comparable leases 2, 3, and 5 amount to anchor tenants in each of their respective shopping centers. Therefore, they are not comparable to the subject property's anchor tenants, rendering their lease information of suspect value in discerning the economic rent of anchor tenants in the marketplace.

Finding Green Eagle's expert's comparable leases 1 and 4 the most accurate and representative evidence of economic or market rent for the subject property's anchor tenants, the court finds that an $8.90 per square foot rent should be attributed to the 212,349 square feet of anchor retail area in the subject property's shopping center as of October 1, 2013, October 1, 2014, October 1, 2015, October 1, 2016, and October 1, 2017 valuation dates.

b. Mid-size and junior anchor

***11** The subject property's mid-size and junior anchor tenants occupy retail stores totaling 36,674 square feet (21,674 + 15,000 = 36,674), comprising approximately 13.5% of the subject property's retail area.

The court's review of Green Eagle's expert's comparable leases 6, 7, 8, 9, and 10 discloses that each lease is in community shopping centers similarly sized to the subject, ranging from 184,261 to 272,046 square feet of gross leasable area. [13] In addition, comparable leases 6, 7, 8, 9, and 10 comprise between 5.5% and 20.1% of the retail area in their respective shopping centers. Moreover, although comparable leases 7 and 8 were executed in 2011, approximately twenty months prior to the first valuation date involved herein, based on the testimony of Mr. Orrico and Green Eagle's expert, that there was little fluctuation experienced in the market for mid-sized retail areas between 2011 and 2017, the court finds that they represent market rent. Thus, the court finds that comparable leases 6, 7, 8, 9, and 10 adequately represent the sector of mid-sized retail tenants in a community shopping center. However, the court finds that Green Eagle's expert's -5% location adjustment to comparable leases 8, 9, and 10 was unsupported by adequate evidence in the record. [14]

Accordingly, the adjusted rental range for Green Eagle's expert's comparable leases is $9.00 to $12.46, per square foot, with a mean of $10.69.

The court's review of Mansfield's expert's four comparable leases discloses three are not located in community shopping centers and thus, are of dubious usefulness to the court. Comparable lease 3 is not located in a community shopping center but rather is a single-tenanted, stand-alone building. Comparable lease 3 is a 23,000 square foot retail store located on Route 10 in East Hanover, Morris County, New Jersey. As comparable lease 3 is not located in a community shopping center and is a stand-alone building, the tenant is not benefitted from having a larger anchor tenant adjacent to it and attracting potential business to its store. Thus, the rent negotiated by the tenant reflects the lack of a synergistic benefit that Mansfield's expert opined exists in the subject property's community shopping center between the Walmart, Kohl's, and the mid-size and in-line tenants.

Comparable lease 4 is a 55,398 square foot furniture store, [15] in a two-tenant building located on Route 46 in Totowa, Passaic County, New Jersey. Thus, comparable lease 4 is also not located in a community shopping center. The other tenant in comparable lease 4's building occupies approximately 150,000 square feet and operates a tire distributorship. Importantly, Mansfield's expert did not possess, or review the lease agreement, or sublease agreement, for comparable lease 4. The only alleged confirmation of comparable lease 4's lease terms was Mansfield's expert's review of a rent roll furnished by another appraiser. Mansfield's expert did not know who prepared the rent roll or who produced the rent roll to the other appraiser. Mansfield's expert did not speak with any representatives of the landlord or tenant, nor the real estate brokers or attorneys involved in the lease or sublease transaction to verify their authenticity. The court finds Mansfield's expert's reliance on a rent roll, without having reviewed the lease, sublease, or lease abstract and without verifying the pivotal lease terms with any individual having personal knowledge of the lease transaction renders comparable lease 4 inherently unreliable.

***12** Therefore, for the above stated reasons, the court does not find that Mansfield's expert's comparable leases 3 and 4 are reliable evidence of market rent and accurately reflect the economic rent that would be negotiated by a junior anchor or mid-size tenant in a community shopping center.

Additionally, Mansfield's expert's comparable lease 1 is situated in a three-retail store outbuilding adjacent to the Rockaway Townsquare Mall and not in a community shopping center. Mansfield's expert testified that comparable lease 1 was representative of a junior anchor or mid-sized retail store, as it comprises approximately 27,459 square feet. However, Mansfield's expert failed to furnish the court with the total square footage of the retail outbuilding area. Therefore, the court could not discern the size of the retail center where comparable lease 1 was located and how that square footage percentage may have contributed to its ability to negotiate rent. More importantly, the court questions the impact and significance that comparable lease 1's location, as part of the Rockaway Townsquare Mall complex, had in determining the rent. Accordingly, while the court does not exclude Mansfield's expert's comparable lease 1, the court attributes little weight to it in discerning the economic or market rent of the junior anchor or mid-size tenant retail units.

Accordingly, analyzing Green Eagle's expert's comparable leases 6, 7, 8, 9, and 10 and Mansfield's expert's comparable leases 1 and 2 discloses the following range of adjusted rents for the junior anchor or mid-size tenants: $9.00, $10.00, $12.00, $12.46, $14.70, and $16.83. The median is $12.23 per square foot, and the mean is $12.50 per square foot. After analyzing the foregoing comparable leases, the court attributes the greatest weight to Green Eagle's expert's comparable lease 6 ($10.00 psf) and comparable lease 7 ($12.46 psf), which are the subject property's Marshall's lease and Party City leases; Green Eagle's expert's comparable lease 9 ($10.00 psf), located in Pohatcong, and Mansfield's expert's comparable lease 2 ($16.83 psf), located in Randolph. Accordingly, the court concludes an economic or market rent of $12.30, per square foot, should be attributed to the 36,674 square feet of junior anchor and mid-size retail area in the subject property's shopping center, as of the October 1, 2013, October 1, 2014, October 1, 2015, October 1, 2016, and October 1, 2017 valuation dates. [16]

c. In-line

The in-line tenants occupy approximately 23,023 square feet of the subject property's retail area, comprising approximately 8.5% of the center.

The court's review of Green Eagle's expert's comparable leases 11, 12, and 13, and Mansfield's expert's comparable leases 5, and 6, discloses that each of the leases are in a shopping center immediately adjacent to the subject property's shopping center along Route 57. Green Eagle's expert's comparable lease 9 and Mansfield's comparable lease 6 appear as the same leased premises. [17] Moreover, Green Eagle's expert's comparable leases 11, 12, and 13 were executed between December 2013 and November 2014, and Mansfield's expert's comparable leases 5 and 6 were executed between August 2012 and April 2015. Therefore, the foregoing five leases were executed within the valuation periods involved in these local property tax appeals. Accordingly, the court finds that the foregoing leases accurately represent comparable in-line retail stores in the Mansfield Township marketplace.

***13** However, the court does not find Mansfield's expert's comparable leases 7, 8, 9, and 10comparable to the subject property's in-line stores, and thus, representative of the economic rent for the subject property's in-line retail stores. Mansfield's expert's comparable lease 7 is a Starbucks with a drive-up window and an exterior patio area included in the retail leasable area. None of the subject property's in-line tenancies have a drive-up window, and Mansfield's expert offered no evidence that a drive-up window could be constructed for any of the subject property's in-line tenancies. [18] Moreover, Mansfield's expert did not offer any evidence that the subject property's in-line stores include or can accommodate an exterior patio area. Additionally, the lease affords Starbucks construction allowances totaling approximately $94,100. Although Mansfield's expert submitted that he believed these allowances were furnished to address structural issues and were not part of a tenant improvement allowance, he did not confer with any of the lease transaction participants to verify his beliefs regarding the construction allowances and offered no basis of support for his beliefs. Moreover, during cross-examination, Mansfield's expert offered that Starbucks used part of the allowance to install the drive-up window, drive-up lanes, parking area, and parking spaces. Thus, the court is unsure whether all or only a portion of the $94,100 allowance was used by Starbucks as a tenant improvement allowance, and more importantly, whether that allowance influenced the rent payable under the lease.

Additionally, Mansfield's expert's comparable leases 8 and 9 are situated in a retail outbuilding immediately adjacent to the Rockaway Townsquare Mall complex and are not located in a community shopping center. According to Mansfield's expert, leases 8 and 9 represent the market rent for in-line retail stores. However, the court questions the impact their

location in the Rockaway Townsquare Mall complex had in determining the rent for comparable leases 8 and 9. Being located in the Rockaway Townsquare Mall complex likely impacted the in-line rents charged for comparable leases 8 and 9. Therefore, the court does not find them to be comparable to the subject property's in-line leases.

Finally, Mansfield's expert's comparable lease 10 was apparently a "turnkey" lease arrangement. Generally, under a turnkey lease the landlord assumes responsibility for all required demolition and construction to the leased area. The tenant need only turn the key and unlock the doors to commence business operations. During cross-examination, Mansfield's expert acknowledged that under the "landlord's work" section of comparable lease 10, it states that the landlord will remove the existing improvements and satisfy the tenant "requirements" for "the construction of a turnkey store." Mansfield's expert posited that despite this provision appearing under the "landlord's work" section of the lease because it did not expressly state who paid for the "turnkey" demolition and construction, he assumed that the tenant paid the landlord for those costs. According to Mansfield's expert, "I am certain that there is a rider and reconciliation that was not provided to me in discovery which comes later, after the lease was done" that memorialized who was responsible for the costs of construction. However, Mansfield's expert offered no evidence to support this conclusion. Thus, the court finds Mansfield's expert's statements in that regard to amount to little more than speculation and supposition. Mansfield's expert possessed no knowledge or information who paid for the "turnkey" demolition and renovation, whether the landlord or tenant incurred the costs, or whether the costs associated with the demolition and construction were amortized over the lease term and calculated into the monthly rental obligation. Therefore, the court does not find Mansfield's expert's comparable lease 10 to be credible evidence of economic rent for the subject property's in-line retail stores.

Accordingly, analyzing Green Eagle's expert's comparable leases 11, 12, and 13, and Mansfield's expert's comparable leases 5, and 6, discloses the following range of adjusted rents for in-line tenants: $14.85, $17.65, $20.40, $20.40, and $23.54. The median is $20.40 per square foot, and the mean is $19.37 per square foot. After evaluating the foregoing comparable leases, the court concludes an economic or market rent of $20.40, per square foot, should be attributed to the 23,023 square feet of in-line retail area in the subject property's shopping center, as of the October 1, 2013, October 1, 2014, October 1, 2015, October 1, 2016, and October 1, 2017 valuation dates.

d. Vacancy and collection loss

***14** According to Green Eagle's expert, the alleged "superadequacy" of Building One was a factor he considered in arriving at a vacancy and collection loss. In Green Eagle's expert's opinion, Building One suffers from functional obsolescence because Walmart and Target, the "leaders in the commercial shopping center world are looking at stores of the future between 45,000 to 75,000± square feet." This "revolution" will cause "commercial establishments [such] as Walmart and Target ... [to] not long be constructing the prior building model of the big box with ... a store between 100,000 to 200,000± square feet." In Green Eagle's expert's estimation, as of each valuation date at issue, a "more utopian" or "favorably sized" 75,000 square foot building would have been constructed in place of the "larger, functionally obsolete," 123,519 square foot, Building One. In his opinion, Building One possesses a layout and design representing "something of the past, not a current, in demand, kind of a building." [19]

In addition to considering the alleged superadequacy of Building One, Green Eagle's expert examined the subject property's current and historical vacancy rates, along with published articles addressing the "future of brick-and-mortar retail stores," and 3rd/4th quarter 2015 Brunelli studies on retail vacancy rates in New Jersey. The Brunelli studies revealed that retail stores' vacancy rates in northern New Jersey counties were at 7.9% in 2015. Based on Green Eagle's expert's review of the subject property's vacancies during the tax years at issue, he found that the anchor stores have been 100% occupied, while the mid-sized stores were 50% vacant until 2015, and the smaller in-line stores were approximately 36% vacant. After considering the articles, published data, and alleged superadequacy of Building One, Green Eagle's expert opined that a vacancy and collection loss factor of 7.5% should be applied to the subject property as of each valuation date.

For reasons later expressed in this opinion, the court does not find credible Green Eagle's expert's testimony that Building One suffers from any superadequacy. Thus, the court finds that consideration of Building One's alleged superadequacy in calculating the subject property's vacancy and collection loss factors would artificially inflate those rates.

Similarly, Mansfield's expert apparently conducted a review of the subject property's current and historical vacancy rates. In addition, he generated a CoStar report containing the vacancy rates of retail buildings located within a 1-mile radius of the subject property.[20] The CoStar report apparently examined approximately 779,429 square feet of retail space, detailing vacancy rates of: (i) 7.4% for 3rd quarter 2013; (ii) 5.8% for the 3rd quarter 2014; (iii) 4.2% for the 3rd quarter 2015; (iv) 4.5% for the 3rd quarter 2016; (v) 5.6% for the 3rd quarter 2017. After reviewing the foregoing information, Mansfield's expert concluded a vacancy and collection loss factor of 5%. However, the CoStar report is not annexed to Mansfield's expert's appraisal report. Thus, the court is unsure of the type or quality of the retail buildings included in that report. For instance, the court does not know how many community shopping centers are included in the report and whether the report is predominantly composed of owner-occupied stand-alone retail buildings or small in-line strip shopping centers.

After having considered the experts' testimony and reviewing the above information, the court finds that a vacancy and collection loss factor of 5.5% should be applied to the subject property as of October 1, 2013, October 1, 2014, October 1, 2015, October 1, 2016, and October 1, 2017 valuation dates.

e. **Stabilization**

***15** Once economic or market rent and the vacancy and collection loss to be applied has been determined, the appraiser must discern the **stabilized** expenses to be applied to the Effective Gross **Income**. **Stabilization** "involves elimination of abnormalities or any additional **transitory conditions** from stated **income** or expenses to reflect **conditions** that are expected to continue over the economic life of the property." First Republic Corp. of America, 16 N.J. Tax at 579 (Tax 1997) (citing The Dictionary of Real Estate Appraisal, 344-45 (3rd ed. 1993)). Consistent with that principle, under the **income** capitalization approach, the appraiser must perform a "comprehensive analysis of the annual expenses" and **income** of the property being appraised. The Appraisal of Real Estate, at 453. As part of that analysis the appraiser will prepare a reconstructed operating statement to "reflect the potential future performance of a property, considering the historical **income** and expenses of an investment property." Ibid. See also Parkway Village Apartments Co., 8 N.J. Tax at 444 (concluding that "[i]t is clear that an appraiser's function is to reconstruct a yearly pattern of expenses ... Expenses vary from year to year, and it is important to review operating statements for three or more years in order to determine whether certain expenses are typical or atypical."). It is through the examination and analysis of the property's historical **income** and expense data, when measured against comparable properties in the market, that an appraiser is able to discern the potential future performance of the property over its economic life.

However, no static rule can be applied when determining whether certain **conditions** will persist over a property's economic life. An appraiser must consider each project on a case-by-case basis and analyze the property's historical **income** and expenses against marketplace norms. When evidence discloses that a property's actual expenses are outside acceptable norms, an adjustment must be fashioned to fit the "well-managed" standard. Equitable Life Assur. Soc'y of U.S. v. Secaucus Twp., 16 N.J. Tax 463, 467 (App. Div. 1996). Therefore, in fashioning a reconstructed operating statement, an appraiser should rely on marketplace norms and those **income** and expenses that the evidence dictates will reasonably continue over a property's economic life, and reject those that may be irregular, erratic, uncharacteristic, and not typical in the industry.

1. Tenant improvement/fit-up allowances

In "certain real estate markets, space is rented to a new tenant only after substantial interior improvements are made." Hull Junction Holding Corp., 16 N.J. Tax at 106 (quoting Appraisal Institute, The Appraisal of Real Estate, 450 (10th ed. 1992)). When these improvements are incurred at the landlord's expense and are necessary to realize market rent, they are referred to as tenant improvement/fit-up allowances. The cost of these allowances are often built into the rental rate and amortized by the landlord over the lease term. The Appraisal of Real Estate, at 474.

Here, both experts agreed that tenant improvement/fit-up allowances were customary for community shopping centers and retail stores in the subject property's market area; however, the experts disagreed on the amount of those allowances. In Green Eagle's expert's opinion, the tenant improvement/fit-up allowance should be $0.75 per square

foot of building area; and in Mansfield's expert's opinion, the tenant improvement/fit-up allowance should be $1.50 per square foot of building area. Importantly, however, in calculating the tenant improvement/fit-up allowance, Green Eagle's expert applied his $0.75 per square foot allowance to the subject property's 272,046 square feet gross retail area. In sharp contrast, Mansfield's expert applied his $1.50 per square foot tenant improvement/fit-up allowance to 148,527 square feet. [21]

Unfortunately, the experts provided little market data and surveys supporting their tenant improvement/fit-up allowance calculations. Mr. Orrico presented the most credible evidence during trial regarding tenant improvement/fit-up allowances. According to Mr. Orrico, National Realty divided and renovated the former Walmart store in the Pohatcong community shopping center, consisting of approximately 133,000 square feet, to create two separate retail stores, one for Hobby Lobby (56,330 square feet), and the other for Marshalls (net of 42,000 square feet after demolition of approximately 35,000 square feet). The costs borne by National Realty to fit-up the Hobby Lobby store were approximately $280,000 or $4.97 per square foot ($280,000 / 56,330 square feet = $4.97). Conversely, the costs borne by National Realty to fit-up the Marshalls store were significantly more, approximately $2,800,000 or $36.36 per square foot ($2,800,000 / 77,000 square feet = $36.36). Mr. Orrico explained that the costs to fit-up the Marshalls were much higher because they wanted National Realty to demolish approximately 35,000 square feet of the former store and furnish them with a turn-key store. Thus, National Realty had to undertake a greater scope of work. However, because National Realty had to incur additional renovation costs, the rent attributable to the Marshalls store was approximately $5.00 per square foot more than the rent attributable to the Hobby Lobby store for similar lease terms.

***16** Accepting a ten-year useful life as proffered by Mansfield's expert, the annual expense incurred by National Realty to fit-up the Hobby Lobby retail store was approximately $0.497 per square foot. Conversely, the annual expense incurred by National Realty to fit-up the Marshalls retail store was approximately $3.36 per square foot.

Accordingly, considering the experts' testimony and the above information, the court finds that Green Eagle's expert's proposed annual tenant improvement/fit-up allowance of $0.75 per square foot is reasonable in the Warren County community shopping center market. However, because Walmart leases the land where Building One is located and owns the building and improvements, not Green Eagle, the annual tenant improvement/fit-up allowance should be applied only to the 148,527 square feet of retail area Green Eagle owns (Building Two and the restaurant pad site). Therefore, the court will apply a $0.75 per square foot tenant improvement/fit-up allowance to the subject property's 148,527 square feet of Building Two and restaurant pad site.

2. Operating expenses and reserves

Both experts reached similar conclusions with respect to the **stabilized** operating expenses (management fees, real estate commissions, and structural reserves) that should be applied to the subject property's Effective Gross **Income**.

Green Eagle's expert reasoned that management fees in community shopping centers like the subject property range from 3% to 5% of Effective Gross **Income**. Green Eagle's expert compared management fees paid by National Realty in thirteen community shopping centers in New Jersey, finding that the "average management fee [is] ... 3.66%" and rounding his concluded management fee to 4.0%. Conversely, Mansfield's expert explained that management fees in community shopping centers, range from 3% to 7% of Effective Gross **Income**, "selecting a percentage in the middle of the range" at 3.50%.

Similarly, Green Eagle's expert expressed that leasing commissions for community shopping centers historically range from 3% to 6%. Green Eagle's expert compared real estate commissions paid by National Realty in thirty-three lease transactions involving community shopping centers throughout New Jersey, finding that the "average is 3.41%" and rounding his concluded value to 3.50%. Conversely, Mansfield's expert surveyed local commercial real estate brokers, finding that commissions should be estimated at 5% of the aggregate rent. Thus, Mansfield's expert opined that a leasing commission expense of 2.5% should be applied.

Finally, based on his review of market data, Green Eagle's expert opined that a reserve allowance of 2.0% should be applied for anticipated structural repairs to the subject property. Conversely, Mansfield's expert analyzed investor surveys for strip shopping centers and determined that anticipated replacement reserves range from $0.10 to $0.50 per square foot, concluding a $0.35 value per square foot value. Applying the $0.35 value to the subject property's

145,627 square feet attributable to Building Two and the restaurant pad site resulted in a reserve allowance of approximately 2.07% of Effective Gross **Income**.

Although the court finds both experts **stabilized** operating expenses to be reasonable and similar, the court finds the empirical data relied upon by Green Eagle's expert in discerning his **stabilized** operating expenses to be more credible, and reliable evidence of **stabilized** expenses for a community shopping center. Therefore, the court will apply a management fee of 4.0%, leasing commissions of 3.50%, and a reserve allowance of 2.0% of Effective Gross **Income**. However, as stated above, because Walmart's occupy of Building One is a ground lease, and Walmart is responsible for all structural repairs to its building, the court will apply the structural reserve component of the **stabilized** operating expenses only to the 148,527 square feet comprising Building Two and the restaurant pad site.

3. Capitalization

***17** The direct capitalization technique is used "to convert an estimate of a single year's **income** expectancy into an indication of value in one direct step, either by dividing the net **income** estimate by an appropriate capitalization rate or by multiplying the **income** estimate by an appropriate factor." The Appraisal of Real Estate, at 491; Hull Junction Holding Corp., 16 N.J. Tax at 80-81. Thus, the capitalization rate is the device that converts a property's Net Operating **Income** into an estimate of value.

Here, in deriving their capitalization rates, Green Eagle's expert and Mansfield's expert undertook a review of published data, including investor surveys, and employed the Band of Investment technique.[22] The Band of Investment technique "is a form of 'direct capitalization' which is used 'to convert a single year's **income** estimate into a value indication.' The technique includes both a mortgage and an equity component." Hull Junction Holding Corp., 16 N.J. Tax. at 80-81 (quoting Appraisal Institute, The Appraisal of Real Estate, 467 (10th ed 1992)). When employing the "Band of Investment technique, it is incumbent upon the appraiser to support the various components of the capitalization rate analysis by furnishing 'reliable market data ... to the court as the basis for the expert's opinion so that the court may evaluate the opinion.' " Id. at 82 (quoting Glen Wall Assocs., 99 N.J. 265, 279-80 (1985)).

Both Green Eagle's expert and Mansfield's expert consulted the American Council of Life Insurers ("ACLI") Investment Bulletins for their capitalization rates. Green Eagle's expert consulted the ACLI tables containing Commercial Mortgage Commitments – Fixed Rate Mortgages – Retail properties, loans in excess of $25 Million, for the 3rd and 4th Quarters 2013-2017. Mansfield's expert consulted the ACLI tables containing Commercial Mortgage Commitments – Fixed Rate Mortgage – Retail properties, for the 3rd Quarter 2012-2013. In addition, Mansfield's expert consulted the ACLI tables containing Commercial Mortgage Commitments – All Loans category - Retail properties – all loan amounts, for the 3rd Quarter 2014-2017.

In addition, both experts consulted Korpacz/PWC National Strip Shopping Center Market surveys ("Korpacz") for their capitalization rates. Green Eagle's expert relied on the 3rd and 4th Quarters 2013-2017 Korpacz surveys, and Mansfield's expert relied on the 3rd Quarter 2013-2017 Korpacz surveys.

Green Eagle's expert also consulted Real Estate Research Corporation publications, 2nd tier properties, within the Retail/Neighborhood Commercial property category, for the 3rd and 4th Quarters 2013 – 2017 ("RERC") for their capitalization rates.

Mansfield's expert also consulted RealtyRates.com surveys, retail properties, for the 4th Quarter 2012 – 2017 ("RealtyRates") for capitalization rates.

After reviewing that data and information, Green Eagle's expert concluded the following capitalization rates: (i) 7.82%, as of October 1, 2013; (ii) 7.72%, as of October 1, 2014; (iii) 7.72%, as of October 1, 2015; (iv) 7.72%, as of October 1, 2016; and (v) 7.72%, as of October 1, 2017. Conversely, Mansfield's expert concluded the following capitalization rates: (i) 6.69%, as of October 1, 2013; (ii) 6.69%, as of October 1, 2014; (iii) 6.69%, as of October 1, 2015; (iv) 6.69%, as of October 1, 2016; and (v) 6.69%, as of October 1, 2017.

***18** The court's own review and analysis of the information disclosed that: (i) as of the October 1, 2013 valuation date, retail property interest rates were 4.20% to 4.35%, loan-to-

value ratios were 60.69% to 60.76%, and mortgage constants were 5.52% to 5.99%; (ii) as of the October 1, 2014 valuation date, retail property interest rates were 3.93% to 4.15%, loan-to-value ratios of 59.35% to 61.29%, and mortgage constants were 5.47% to 6.19%; (iii) as of the October 1, 2015 valuation date, retail property interest rates were 3.89% to 4.31%, loan-to-value ratios of 58.53% to 61.17%, and mortgage constants were 5.23% to 5.71%; (iv) as of the October 1, 2016 valuation date, retail property interest rates were 3.50% to 3.94%, loan-to-value ratios were 52.85% to 58.25%, and mortgage constants were 4.66% to 5.39%; and (v) as of the October 1, 2017 valuation date, retail property interest rates were 3.67% to 4.56%, loan-to-value ratios were 55.97% to 58.25%, and mortgage constants were 4.58% to 5.35%.

Thus, based on a review of the above data and information, the court concludes that under the Band of Investment technique: (i) as of the October 1, 2013 valuation date, Mansfield's expert's mortgage interest rate of 4.50% is more reasonable, a 25-year amortization term is more reasonable and will produce a mortgage constant in line with the published data, a 65% loan-to-value ratio should be applied, and Green Eagle's expert's equity dividend rate of 8.00%, is more reasonable; (ii) as of the October 1, 2014, October 1, 2015, October 1, 2016, and October 1, 2017 valuation dates, Green Eagle's and Mansfield's expert's mortgage interest rates of 4.50% are reasonable, a 25-year amortization term is more reasonable and will produce a mortgage constant in line with the published data, a 65% loan-to-value ratio should be applied, and Green Eagle's expert's equity dividend rate of 8.00%, is more reasonable.

Thus, using the Band of Investment technique, the calculation of the capitalization rate as of the October 1, 2013, October 1, 2014, October 1, 2015, October 1, 2016, and October 1, 2017 valuation dates would be:

Mortgage interest rate	4.50%				
Amortization period	25 years				
Mortgage constant	6.67				
Mortgage component	65%	x	6.67	=	4.34 [ROUNDED]
Equity divided rate	8.00%				
Equity component	35%	x	8.00	=	2.80
					7.14

Thus, the court concludes that a 7.14% capitalization rate should apply to the subject property as of the October 1, 2013, October 1, 2014, October 1, 2015, October 1, 2016, and October 1, 2017 valuation dates.

Accordingly, for the reasons set forth above, the court finds the true value of the subject property, under the **income**-capitalization approach, to be $32,100,000, as of the October 1, 2013, October 1, 2014, October 1, 2015, October 1, 2016, and October 1, 2017 valuation dates.

2014, 2015, 2016, 2017, and 2018 Tax Years

INCOME:			
Anchor tenants	$ 8.90 psf	@ 212,349 sq. ft.	$1,889,906
Mid-size tenants	$12.30 psf	@ 36,674 sq. ft.	$ 451,090
In-line tenants	$20.40 psf	@ 23,023 sq. ft.	$ 469,669
TOTAL: POTENTIAL GROSS INCOME			$2,810,665
LESS: Vacancy & Collection Loss	@ 5.50% PGI		($ 154,587)
TOTAL: EFFECTIVE GROSS INCOME			$2,656,078
STABILIZED EXPENSES:			
Leasing Commissions	@ 3.5% of EGI	$ 92,963	
Management	@ 4.0% of EGI	$106,243	
Repairs/Replacement Reserves	@ 2.0% of EGI	$ 53,122	
Tenant Improvements 148,527 sq. ft.	@ $0.75 psf	$111,395	
TOTAL: EXPENSES		($363,723)	
NET OPERATING INCOME			$ 2,292,355
TOTAL CAPITALIZATION RATE 7.14%			
APPLICATION OF CAPITALIZATION RATE	$2,292,355/.0714 =		$32,105,812
CONCLUDED VALUE			$32,100,000

4. Cost Approach

The cost approach derives a property's value "by adding the estimated value of the land to the current costs of constructing a reproduction or replacement for the improvements and then subtracting the amount of depreciation (i.e., deterioration and obsolescence) in the structures from all causes." The Appraisal of Real Estate, at 47. Thus, the cost approach consists of "two elements - land value and the reproduction or replacement cost of the buildings and other improvements." International Flavors & Fragrances, Inc. v. Union Beach Bor., 21 N.J. Tax 403, 417 (Tax 2004).

***19** The cost approach is a particularly effective method of valuation when the property being appraised is new or when the site improvements are unique and designed for a special purpose. The Appraisal of Real Estate, at 567-568. A special purpose property is the type of property that " 'cannot be converted to other uses without large capital investment,' such as a public museum, a church, or a highly-specialized production facility like a brewery." Ford Motor Co., 127 N.J. at 299 (quoting Sunshine Biscuits, Inc. v. Sayreville Bor., 4 N.J. Tax at 495 n. 3 (Tax 1982)).

However, when site improvements are "considerably older or do not represent the highest and best use of the land as though vacant, the physical deterioration, functional obsolescence, and external obsolescence may be more difficult to estimate," rendering the cost approach a less reliable indicator of market value. The Appraisal of Real Estate, at 567-568. Thus, the cost approach can sometimes be impractical in attempting to value properties with "older improvements that suffer substantial depreciation, which can be difficult to estimate." Id. at 45.

During trial, Green Eagle and Mansfield stipulated that the reproduction cost new of Building One (inclusive of an entrepreneurial profit of 10%), was: (i) $11,285,446, as of October 1, 2013; (ii) $11,723,024, as of October 1, 2014; (iii) $11,905,525, as of October 1, 2015; (iv) $12,173,065, as of October 1, 2016; and (v) $12,476,808, as of October 1, 2017. In addition, Green Eagle and Mansfield further stipulated that a 15% depreciation factor should be applied to Building One. Finally, the parties agreed that the value attributable to Building One's parking spaces was $1,492, per parking space.[23] Thus, after deducting the stipulated 15% depreciation factor, and the value of the 615 surface parking spaces (615 x $1,492 = $917,580), the total depreciated value of Building One and its improvements are: (i) $10,510,209 ($11,285,446 - $1,692,817 + $917,580 = $10,510,209), as of October 1, 2013; (ii) $10,882,150 ($11,723,024 - $1,758,454 + $917,580 = $10,882,150), as of October 1, 2014; (iii) $11,037,276 ($11,905,525 - $1,785,829 + $917,580 = $11,037,276), as of October 1, 2015; (iv) $11,264,685 ($12,173,065 - $1,825,960 + $917,580 = $11,264,685), as of October 1, 2016; (v) $11,522,867 ($12,476,808 - $1,871,521 + $917,580 = $11,476,808), as of October 1, 2017.

Both experts employed a hybrid approach to value the subject property. Mansfield's expert's hybrid methodology employs the cost approach, sales comparison approach, and **income** capitalization approach to determine a value for the subject property. Conversely, Green Eagle's expert's hybrid approach involves only the cost approach and **income** capitalization approach.

***20** To ascertain the estimated true value of the land beneath Building One, Mansfield's expert researched vacant land sales to discern a per unit value. He then multiplied the approximately 123,519 square feet of land beneath Building One by his per unit value, to derive an estimated value. Mansfield's expert then added the value he ascribed to the land beneath Building One, to the value he determined for Building Two and the restaurant pad site under the **income** capitalization approach, plus the stipulated reproduction cost new of Building One (less depreciation, plus surface parking spaces), to ascribe a value to the subject property.

In performing his hybrid approach, Green Eagle's expert applied a 20% deduction for functional obsolescence to the stipulated reproduction cost new of Building One. To that value, Green Eagle's expert added the estimated value of the 615 surface parking spaces. Next, Green Eagle's expert used the **income** capitalization approach to compute a value for Building Two and the restaurant pad site. Green Eagle's expert then added the value of Building Two and the restaurant pad site to the value of Building One (less depreciation, less functional obsolescence, plus surface parking spaces) to discern a value for the subject property. Thus, Green Eagle's expert did not attribute any independent value to the land beneath Building One; rather, he opined that the value of the subject property's land was included under his **income** capitalization approach.

Here, the land underlying Building One is subject to a ground lease. Thus, the lessee (Walmart) leased the land from the property owner (Green Eagle), constructed improvements on that land (Building One), and is solely responsible for any maintenance and structural repairs to the building. Moreover, Mr. Orrico offered credible testimony that, during the term of the ground lease, the lessee (Walmart) can demolish all or

so much of the building as it may elect, and upon expiration of the ground lease, the improvements remaining, if any, vest with the property owner (Green Eagle). For the reasons that follow, the court finds the hybrid approach employed by Green Eagle's expert and Mansfield's expert are not reliable indicators of true value and possess inherent difficulties in discerning the true value of this aging community shopping center, that is neither uniquely designed, nor a special-purpose structure. Attempting to derive a value for the land beneath Building One, including the range of adjustments necessary to Mansfield's expert's vacant land sales to accurately account for the differences that exist, renders the hybrid approach employed by Mansfield's expert more speculative and not a credible indicator of the subject property's true value. Additionally, Green Eagle's expert's failure, under his hybrid approach, to consider or analyze the land beneath Building One as excess land available for development in deriving a value for the subject property renders his hybrid approach to value not a credible indicator of the subject property's true value.

A. Functional obsolescence

Although Green Eagle and Mansfield agreed on the replacement cost new of Building One and the application of a 15% deduction for physical depreciation, the experts disagreed whether Building One suffers from functional obsolescence.

Functional obsolescence is characterized as "a flaw in the structure, materials, or design of the improvement when compared with the highest and best use and most cost-effective functional design requirements at the time of the appraisal ... Functional obsolescence, which may be curable or incurable, can be caused by a deficiency, which means that some aspect of the subject property is below standard in respect to market norms." Westwood Lanes, Inc. v. Garwood Bor., 24 N.J. Tax 239, 262 (Tax 2008) (quoting The Appraisal Institute, The Appraisal of Real Estate, 403 (12th ed. 2001)). "The test of curability for functional obsolescence caused by a deficiency is whether the cost to cure the item will result in a value increment equal to or greater than the expenditure, or allow existing items to maintain their value, then the item is considered curable. Otherwise, if the cost to cure the item will not result in a value increment greater than the loss in value caused by the item or building component, then the item is considered incurable." Regent Care v. Hackensack City, 27 N.J. Tax 138, 155 (Tax 2013) (citing The Appraisal of Real Estate, at 434).

***21** Here, Green Eagle's expert maintains that Building One suffers from functional obsolescence because Walmart and Target, the "leaders in the commercial shopping center world, are looking at stores of the future between 45,000 to 75,000± square feet." This "revolution" will cause "commercial establishments [such] as Walmart and Target ... [to] not long be constructing the prior building model of the big box with ... a store between 100,000 to 200,000± square feet." In Green Eagle's expert's estimation, as of each valuation date at issue, a "more utopian" or "favorably sized" 75,000 square foot building would have been constructed in place of the "larger, functionally obsolete," 123,519 square foot, Building One. In his opinion, Building One possesses a layout and design representing "something of the past, not a current, in demand, kind of a building."

Accordingly, in gauging Building One's alleged functional obsolescence, Green Eagle's expert compared the cost of constructing a new, 75,000 square foot building to the cost of constructing a new Building One and determined that the difference in cost was 22%.[24] Accordingly, Green Eagle's expert applied a -20% functional obsolescence factor to Building One's cost to construct new, in addition to the -15% physical depreciation factor.[25] Thus, as of each valuation date at issue, Green Eagle's expert concluded a value for Building One, as follows: (i) $8,529,000, as of October 1, 2013; (ii) $8,814,000, as of October 1, 2014; (iii) $8,932,000, as of October 1, 2015; (iv) $9,106,000, as of October 1, 2016; and (v) $9,304,000, as of October 1, 2017.[26]

Conversely, Mansfield's expert found that Building One suffers from no functional obsolescence. Mansfield maintains that the trial testimony disclosed that stores like Walmart are occupying larger footprints and building "Super Stores," not smaller stores. Mansfield highlights that the evidence disclosed that in National Realty's Manville community shopping center, Walmart expanded its existing footprint by 31,162 square feet to a total area of 164,387 square feet. Additionally, Mansfield emphasizes that Walmart vacated its smaller retail store in National Realty's Pohatcong, Warren County, community shopping center in favor of a larger 165,000 square foot facility immediately adjacent thereto. Moreover, effective cross-examination disclosed that Green Eagle's expert conducted no investigation whether Building One could be expanded to accommodate a Walmart "Super

Store," nor did he know whether Walmart has constructed any retail stores in New Jersey less than 100,000 square feet. [27]

Contrary to the opinions and assertions of Green Eagle's expert, the court finds that based on the limited evidence offered during trial, in National Realty's New Jersey community shopping centers, Walmart has opted to possess 160,000 to 190,000 square feet stores, not smaller 75,000 square foot stores. In addition, Mr. Orrico offered credible testimony that, based on his leasing and development experience, stores such as Walmart are seeking to attract more customers to their stores. Thus, more customers are attracted to Walmart's stores offering a grocery component and that occupy a larger footprint. In sum, Green Eagle has not presented any credible evidence that "commercial establishments as Walmart and Target ... will not long be constructing the prior building model of the big box store with ... between 100,000 to 200,000± square feet."

***22** Accordingly, the court finds that Green Eagle's expert's -20% functional obsolescence deduction attributable to Building One is unwarranted.

B. Land Value

The cost approach encompasses two separate and distinct components, an estimate of the "current cost of reproducing or replacing the improvements (including an appropriate entrepreneurial incentive or profit), minus the loss in value from depreciation," and an estimate of the land value. The Appraisal of Real Estate, at 36.

In attempting to determine a property's land value, an appraiser may employ one of the following techniques: sales comparison, market extraction, allocation, subdivision development, land residual, or ground rent capitalization. The Appraisal of Real Estate, at 364-365. The sales comparison method involves researching, analyzing, and adjusting sales of similar vacant parcels to render a value conclusion. The market extraction method involves estimating the depreciated cost of a property's improvements from the property's total sale price to arrive at a land value. The allocation method involves deriving an estimated ratio of site value to total property value from comparable sales and applying the ratio to the appraised property. The subdivision development method involves a discounted cash flow analysis where the anticipated gross sales price of finished lots is estimated and the direct costs, indirect costs, and entrepreneurial profit are deducted to determine the estimated net sales proceeds. The estimated net sales proceeds are discounted to present value using a market rate and delineated absorption period. The land residual technique capitalizes the net operating **income** attributable to the land at market capitalization rates to estimate the land value. Finally, when property is subject to a ground lease, the ground rent capitalization method applies a market-derived capitalization rate to the market rate ground rent to determine the land value.

Here, to attempt to discern a value for the land beneath Building One, Mansfield's expert performed a comparable sales analysis, analyzing five vacant land sales. The land sales were in: (i) Bayonne, Hudson County; (ii) South Brunswick, Middlesex County; (iii) Marlboro Township, Monmouth County; (iv) Riverdale, Morris County; and (v) Freehold Township, Monmouth County. The properties range in size from 14.367 to 25.655 acres, and the properties were sold between June 2006 and May 2012. The sales prices of the vacant lots range from $292,249 to $522,299, or $33.82 to $70.27 per square foot. Mansfield's expert applied size adjustments to the sales price per square foot for each tax year, of -10% to sales 2, 3, and 4, and -5% to sale 5. No other adjustments were deemed necessary by Mansfield's expert. After analyzing the land sales, Mansfield's expert determined that a $40.00 per square foot value should be attributed to the 123,519 square feet of land underlying Building One. Thus, Mansfield's expert concluded that a value of $4,940,760 (123,519 sq. ft. x $40.00 = $4,940,76) should be attributed to the 123,519 square feet of land beneath Building One.

Mansfield's expert added his land value to the depreciated value of Building One's improvements (each year), plus the net value of the 615 surface parking spaces attributable to Building One, to determine the total value of Building One and its land. Finally, Mansfield's expert added the land and improvement calculations to the value he computed for Building Two and the restaurant pad site under the **income** capitalization approach to determine the subject property's total value.

***23** Conversely, in discerning a value for the entirety of the subject property's land, Green Eagle's expert reasoned that because the subject property is a single, undivided property, Building One's land value would be included in the value ascribed to Building Two and the restaurant pad site, under the **income** capitalization approach. Accordingly, employing the **income** capitalization method and ascribing the same market rents, vacancy and collection loss factors, **stabilized**

operating expenses (real estate commissions, management, reserves, tenant fit-up costs), and capitalization rates that he applied to the entire shopping center, Green Eagle's expert applied those figures only to Building Two and the restaurant pad site. Green Eagle's expert then added the value he determined for Building Two and the restaurant pad site to the total depreciated value of Building One's improvements (inclusive of the surface parking spaces and the deduction for depreciation, and functional obsolescence). Thus, by adding the total depreciated value of Building One's improvements to the value ascribed to Building Two and the restaurant pad site under the **income** capitalization approach, Green Eagle expert opined that a total value for the subject property could be determined.

Some support exists for the hybrid methodology advanced by Green Eagle's expert and Mansfield's expert. In Livingston Mall Corp. v. Livingston Twp., 15 N.J. Tax 505 (Tax 1996), a hybrid approach, was accepted by the court for determining the true value of the Livingston Mall, a "super-regional mall containing a gross building area of 1,144,723 square feet," located on 59.6 acres. Id. at 508. There, in attempting to ascribe a value to the mall's land, the plaintiff's expert was unable to find comparable vacant land sales; thus, he "used the equalized value of the land assessment as the land value under the cost approach," or $19,500,000. Id. at 510. Plaintiff's expert then employed both the cost approach and the **income** capitalization approach to estimate the property's value. Conversely, the defendant's expert attempted to value the mall's land by analyzing sales of six vacant parcels ranging in size "from 0.36 aces to 5.24 acres. The sixth parcel, located in East Hanover, contained 26.91 acres." Id. at 514. Moreover, the defendant's expert apparently determined, without adequate support, that the "easement benefitting the mall was worth 50% of the fee simple value of the servient tenement." Id. at 514. Thus, the defendant's expert calculated the property's total land value to be $32,185,000. Defendant's expert also employed the cost approach and **income** capitalization approach to value the mall. However, the defendant's expert's final value conclusions were derived from applying a hybrid approach using the cost approach to value the mall anchor stores and the **income** approach to value the non-anchor mall stores. Id. at 513.

Judge Crabtree concluded that the **income**-capitalization approach was not probative of the true value of a super-regional mall. Id. at 522. Rather, he found that the cost approach was a better indicator of the mall anchor stores' value because they were owner-occupied. However, because the non-anchor mall stores and kiosks were owned by the property owner and leased, he concluded that the **income**-capitalization approach was more appropriate for determining the value of the kiosks and non-anchor stores. Ibid. After employing the Marshall & Swift Valuation Service to ascribe a classification to the mall anchor stores, reviewing the photographic evidence, determining the entrepreneurial profit and the accrued depreciation to be applied, he determined the estimated reproduction cost new, for the mall anchor stores. Additionally, after determining a market rent for the non-anchor stores and kiosks, vacancy and loss allowance, and **stabilized** expenses, he applied a capitalization rate to develop an estimated value for the non-anchor stores and kiosks. After adding the estimated reproduction cost new of the mall anchor stores to the derived value of the non-anchor mall stores and kiosks, he determined the property's true value. However, as the ratio of assessment to true value was within the Chapter 123 common level range for all years under appeal, Judge Crabtree affirmed the property's local property tax assessment.

***24** Most importantly however, Judge Crabtree expressed the following:

> even though the court finds the cost approach to be most reliable in determining the true value of the anchor stores, no value has been ascribed to the land underlying those stores. The court's ability to make a finding of true value of the underlying land was hampered by an inadequate record. While the evidence indicates that the anchor stores paid rent to plaintiff under land leases, no proofs were offered as to the amounts of such rents. Moreover, plaintiff's expert submitted no comparable land sales but chose to rely upon the equalized value of the land assessments for his land value estimates, an approach which this court finds completely unacceptable. Defendant's expert's vacant land sales were simply not probative. The different uses and the vast differences in size rendered meaningful comparisons impossible.
>
> [Id. at 527 n. 10 (emphasis added).]

Thus, Judge Crabtree keenly observed that although the mall anchor tenants paid ground rent to the property owner for the land underlying the anchor tenant stores, and the property owner derived an **income** stream from their use of the land for a fixed period of years, the trial record contained inadequate evidence to enable the court to make a finding of what the land's true value was.

Here, the court faces the same challenges and obstacles. Mansfield's expert attempted to use vacant land sales to determine the value of the land beneath Building One. Conversely, Green Eagle's expert failed to consider or analyze the land beneath Building One as excess land for development in deriving a value for the subject property.

Excess land is "surplus land not needed to support the existing improvements." M.I. Holdings, Inc. v. Jersey City, 12 N.J. Tax 129, 137 (Tax 1991). Excess land possesses a separate and distinct value and the ability to be developed, generate an **income** stream, and/or be sold separately from the balance of the property. Appraisal Institute, The Appraisal of Real Estate, 214 (13th ed. 2008).

Here, the land beneath Building One can be developed separately from Building Two and the restaurant pad site, as a one-story building consisting of 123,519 square feet was constructed on it. Moreover, Green Eagle derives an **income** stream from leasing the land. Importantly, however, the **income** derived from leasing that portion of the subject property's land is not reflected in the **income** of Building Two and the restaurant pad site. Thus, Green Eagle's expert's opinion that the value of the land beneath Building One is accounted for under the **income** capitalization approach to Building Two and the restaurant pad site is misguided. When employing the cost approach to value Building One, the value of the land or the **income** stream being generated from the land must be accounted for in determining true value.

In addition, the subject property constitutes one undivided parcel, not two separate and distinct parcels. Thus, the land underlying Building One does not have the ability to be sold without subdivision. However, Mansfield's expert offered no evidence with respect to the ability to subdivide the subject property's land into separate and distinct lots or the costs that would be associated with such a subdivision, or whether subdivision approval was even reasonably probable. Each of Mansfield's expert's comparable land sales possesses the ability to be sold. Thus, using vacant land sales without corresponding adjustments derived from the market to account for these differences renders Mansfield's expert's vacant land sales of dubious value. Moreover, Mansfield's expert's vacant land sales are located across several counties in the state, approximately 39 to 59 miles from the subject property. The court finds that their distant location renders them not comparable to the subject property. Finally, the subject property is a community shopping center comprising 272,046 square feet of leasable area, not a super-regional mall containing more than 1,144,723 square feet. Thus, the court finds that the use of the hybrid approach, adopted by Judge Crabtree in Livingston Mall Corp., is not probative of the subject property's value.

***25** Accordingly, without an adequate trial record to discern the value of the land underlying Building One, the court cannot afford either of the experts' hybrid approaches to value in these matters any weight.

5. Corrected Local Property Tax Assessment

Having reached a conclusion of the subject property's true or market value, the court will determine the correct assessments for the subject property for the 2014, 2015, 2016, 2017, and 2018 tax years. Under N.J.S.A. 54:51A-6(a), commonly referred to as Chapter 123, when the court is satisfied in a non-revaluation year by the evidence presented "that the ratio of the assessed valuation of the subject property to its true value exceeds the upper limit or falls below the lower limit of the common level range, it shall enter judgment revising the taxable value of the property by applying the average ratio to the true value of the property...." N.J.S.A. 54:51A-6(a). This process involves application of the Chapter 123 common level range. N.J.S.A. 54:1-35a(b). The formula for determining the subject property's ratio is:

Assessment / True Value = Ratio

When the ratio of assessed value exceeds the upper limit or falls below the lower limit, the formula for determining the revised taxable value of the property, under N.J.S.A. 54:51A-6(a), is as follows:

True Value x Average Ratio
= Revised Taxable Value

In 2014, Mansfield conducted a municipal-wide revaluation. Therefore, for the 2014 tax year Chapter 123 is not applicable, and the ratio is deemed to be 100%. See N.J.S.A. 54:51A-6d; Brown, 19 N.J. Tax at 373; Elrabie v. Franklin Lakes Bor., 24

N.J. Tax 158, 179-180 (Tax 2008). Consequently, the subject property's assessment for the 2014 tax year is $32,100,000.

Accordingly, a judgment establishing the subject property's tax assessment for the tax year 2014 will be entered as follows:

Land	$13,736,300
Improvement	$18,363,700
Total	$32,100,000

For the 2015 tax year, the ratio of total assessed value, $33,190,600, to true market value, $32,100,000, yields a ratio of 1.034% ($33,190,600 / $32,100,000 = 1.034%), which exceeds 100%. Consequently, the subject property's assessment calculation for the 2015 tax year is:

$32,100,000 x .9621 = $30,883,400 [ROUNDED]

Accordingly, a judgment establishing the local property tax assessment for the subject property for tax year 2015 will be entered as follows:

Land	$13,736,300
Improvement	$17,147,100
Total	$30,883,400

For the 2016 tax year, the ratio of total assessed value, $33,190,600, to true market value, $32,100,000, yields a ratio of 1.034% ($33,190,600 / $32,100,000 = 1.034%), which exceeds 100%. Consequently, the subject property's assessment calculation for the 2016 tax year is:

$32,100,000 x .9467 = $30,389,100 [ROUNDED]

Accordingly, a judgment establishing the local property tax assessment for the subject property for tax year 2016 will be entered as follows:

Land	$13,736,300
Improvement	$16,652,800
Total	$30,389,100

***26** For the 2017 tax year, the ratio of total assessed value, $33,190,600, to true market value, $32,100,000, yields a ratio of 1.034% ($33,190,600 / $32,100,000 = 1.034%), which exceeds 100%. Consequently, the subject property's assessment calculation for the 2017 tax year is:

$32,100,000 x .9414 = $30,218,900 [ROUNDED]

Accordingly, a judgment establishing the local property tax assessment for the subject property for tax year 2017 will be entered as follows:

Land	$13,736,300
Improvement	$16,482,600
Total	$30,218,900

For the 2018 tax year, the ratio of total assessed value, $33,190,600, to true market value, $32,100,000, yields a ratio of 1.034% ($33,190,600 / $32,100,000 = 1.034%), which exceeds 100%. Consequently, the subject property's assessment calculation for the 2018 tax year is:

$32,100,000	x	.9262	= $29,731,000 [ROUNDED]

Accordingly, a judgment establishing the local property tax assessment for the subject property for tax year 2018 will be entered as follows:

Land	$13,736,300
Improvement	$15,994,700
Total	$29,731,000

Contemporaneously with the issuance of this opinion, the court is entering the above-referenced judgments.

All Citations

2021 WL 4167094

Footnotes

1 A community shopping center “reflects a general merchandise or convenience concept and typically encompasses 100,000 to 350,000 square feet of gross leasable area, including anchors, on 10 to 40 acres. A community shopping center will typically have two or more anchors (discount department, supermarket, drug, home improvement, large specialty discount) with a 40% to 60% anchor ratio (the share of a center's total square footage that is attributable to its anchors) and a primary trade area (the area from which 60% to 80% of the center's sales originate) or 3 to 6 miles.” Appraisal Institute, The Dictionary of Real Estate Appraisal, 232 (5th ed. 2010).

2 https://www.fema.gov/glossary/flood-zones.

3 The following matters were stipulated to: (a) the subject property is identified on Mansfield's municipal tax map as Block 1105, Lot 12.01; (b) the real property consists of approximately 36.6 acres; (c) the subject property is in Mansfield's B-2 Business District, with the existing uses complying with Mansfield's municipal zoning ordinances; (d) the subject property is improved with a community shopping center constructed in approximately 2000; (e) the subject property is divided into two building sections and contains a separate restaurant pad site. The first section includes a masonry one-story Walmart consisting of 123,519 square feet. The second section includes three large retail stores: an 88,830 square foot Kohl's department store, a 21,674 square foot Marshalls department store, and a 15,000 square foot Party City store. The second section also includes eleven small “in-line” retail stores ranging in size from 1,200 to 4,000 square feet; (f) the subject property has a gross leasable area of 272,046 square feet, including a 2,900 square foot Arby's fast food restaurant pad site; (g) the subject property contains 1,700 parking spaces with 800 spaces allocated to the Walmart site; (h) the local property tax assessment on the subject property for the 2014, 2015, 2016, 2017, and 2018 tax years was $33,190,600; (i) Mansfield's average ratio of assessed to true value was: (1) 100% in 2014, (2) 96.21% in 2015, (3) 94.67% in 2016, (4) 94.14% in 2017, and (5) 92.62% in 2018; and (j) the highest and best use of the subject property is continued use as a community shopping center. During trial, Green Eagle and Mansfield supplemented their stipulation, agreeing to a value of $1,492 per parking space. Thus, the net value of the 800 parking spaces allocated to Building One was $1,193,600 (800 x $1,492

= $1,193,600). Green Eagle and Mansfield subsequently amended their stipulation, agreeing that the subject property has 1,395 parking spaces, with 615 parking spaces being allocated to Building One.

4 During trial, Green Eagle and Mansfield did not submit a revised calculation of the value of the parking spaces allocated to Building One. Accordingly, after trial, the court inquired whether Green Eagle and Mansfield agreed to the reduced stipulated value of the 615 parking spaces allocated to Building One, $917,580 (615 x $1,492 per parking space = $917,580), versus the $1,193,600 (800 x $1,492 per parking space = $1,193,600) initial stipulation. Green Eagle submitted that “it is within the court's determination whether to calculate such change.” Conversely, Mansfield submitted that “no further calculation is required.”

5 A contenancy clause “permits tenants to terminate a lease if the landlord has not replaced an anchor tenant ... within a predetermined period.” Appraisal Institute, The Appraisal of Real Estate, 473 (14th ed. 2013).

6 Mr. Orrico offered testimony that in National Realty's Pohatcong shopping center, Walmart expressed an intention to vacate and move to a space with a larger footprint. Accordingly, National Realty exercised an option it possessed for adjacent property and entered into a ground lease with Walmart enabling Walmart to construct a larger store containing a grocery component. However, Walmart remained responsible for “back filling” or finding new tenants for its formerly occupied space in the Pohatcong shopping center. Ultimately, National Realty found tenants willing to accept Walmart's former space; however, National Realty had to undertake extensive renovations to portions of the space to accommodate one of the new tenants.

7 Mr. Orrico further offered testimony that in National Realty's Manville shopping center, National Realty reconfigured an area formerly occupied by A&P and extended the area occupied by Walmart, affording them greater square footage to add a grocery component.

8 Comparable lease 2 (56,330 square feet) and comparable lease 3 (42,430 square feet) are in National Realty's Pohatcong community shopping center and were formerly occupied by Walmart. After Walmart vacated the property, approximately 30,000 square feet of the Walmart space was demolished, and the space was divided into two separate retail areas. One, a 56,330 square feet retail store (comparable 2), and the other, a 42,430 square feet retail store (comparable 3).

9 In his appraisal report, Mansfield's expert characterized the Walmart in Building One as the primary anchor in the subject property's shopping center. However, he valued Building One under the cost approach, thereby attributing no value under the **income** capitalization approach.

10 Mansfield's expert's appraisal report states the square footage applicable to the Kohl's, Marshalls, and Party City to be 125,437 square feet. However, during trial, Green Eagle and Mansfield stipulated to a 125,504 square foot computation.

11 A contenancy clause “permits tenants to terminate a lease if the landlord has not replaced an anchor tenant ... within a predetermined period.” The Appraisal of Real Estate, at 473.

12 The cotenancy clauses in several of the in-line retail stores leases referenced the former anchor tenant, A&P, which retail area is now being principally occupied by Kohl's.

13 Comparable lease 6 and comparable lease 7 are the subject property's Marshalls lease and Party City lease.

14 Green Eagle's expert offered only that his location adjustments were based on his analysis of NJDOT traffic counts.

15 A portion of the furniture store is retail space, a portion is mezzanine space, and a portion is warehouse space.

16 The court declined to attribute greater weight to Green Eagle's expert's comparable lease 6, the subject property's Marshall's lease. During trial, Mr. Orrico provided credible testimony that prior to Marshalls agreeing to take occupancy of this space, it sat vacate for 4 years.

17 Although both Green Eagle's expert and Mansfield's expert identify the average rent for the leased comparable as $20.40 per square foot, they recite different lease commencement dates.

18 Mansfield's expert stated that the Starbucks was an end-cap unit with a drive-up window and the subject property has an end-cap unit that was formerly occupied as a restaurant, but the subject property's end-cap unit does not have a drive-up window.

19 In support of these contentions, Green Eagle's expert's report's Addendum contained two articles, one from Investopedia's website titled “The Future of Retail Is Not Big Box Stores,” dated December 17, 2015 and

the other from Retail Dive's website titled "What is the future of brick-and-mortar retail stores?" dated April 13, 2015.

20 Mansfield's expert failed to include a copy of the CoStar vacancy report in his appraisal report. Thus, the court was unable to review the data generating the proposed vacancy rates.

21 Mansfield's expert's appraisal report applied the tenant improvement/fit-up allowance to 148,460 square feet. However, as stipulated by Green Eagle and Mansfield at the beginning of trial, the subject property comprises a total of 272,046 square feet of leasable area, and the Walmart occupying Building One comprises 123,519 square feet. Thus, based on the parties' stipulation, Building Two comprises 148,527 square feet (272,046 – 123,519 = 148,527).

22 "[T]he Tax Court has accepted, and the Supreme Court has sanctioned, the use of data collected and published by the American Council of Life Insurance." Hull Junction Holding Corp., 16 N.J. Tax at 82-83. "Relevant data is also collected and published by ... Korpacz [PWC] Real Estate Investor Survey." Id. at 83. By scrutinizing and "analyzing this data in toto, the court can make a reasoned determination as to the accuracy and reliability of the mortgage interest rates, mortgage constants, loan-to-value ratios, and equity dividend rates used by the appraisers." Ibid.

23 As stated above, Green Eagle and Mansfield initially agreeing that the value of the 800 surface parking spaces allocated to Building One was $1,193,600, or $1,492 per parking space. Subsequently, Green Eagle and Mansfield amended their stipulation to reflect that only 615 parking spaces were allocated to Building One. However, they did not submit to the court a revised calculation of the value of the 615 surface parking spaces. Accordingly, following trial, the court inquired whether Green Eagle and Mansfield agreed to the reduced stipulated value of the 615 surface parking spaces allocated to Building One, $917,580 (615 x $1,492 per parking space = $917,580), versus the $1,193,600 (800 x $1,492 per parking space = $1,193,600) initial stipulation. Green Eagle submitted that "it is within the court's determination whether to calculate such change." Conversely, Mansfield submitted that "no further calculation is required."

24 Green Eagle's expert estimated the cost to construct new, a 75,000 square foot building was $9,264,000 and the cost to construct new, Building One, was $11,906,000 ($9,264,000/$11,906,000 = 22.19%)

25 Green Eagle's expert further testified that he considered the costs incurred by National Realty in subdividing and demolishing a part of the former Walmart space in the Pohatcong shopping center to fit it up for new tenants.

26 These concluded values assumed that 800 surface parking spaces (800 x $1,492, per parking space = $1,193,600) were allocated to Building One. However, during trial the parties stipulated that 615 surface parking spaces (615 x $1,492, per parking space = $917,580).

27 In discussions between Mr. Orrico and Green Eagle's expert, Mr. Orrico apparently averred to Walmart having constructed two stores in New Jersey comprising less than 100,000 square feet. However, Green Eagle's expert was unaware of the locations of those establishments nor the circumstances surrounding their construction.

End of Document

28 N.J.Tax 363
Tax Court of New Jersey.

TD BANK Successor by Merger
to Commerce Bank, Plaintiff,
v.
CITY OF HACKENSACK, Defendant.

DOCKET NOS. 007414–2009, 007421–2009, 010331–2010, 010333–2010, 003471–2011, 003478–2011

Decided: April 22, 2015

Synopsis

Synopsis

Background: Property taxpayer brought action to challenge assessment city imposed on taxpayer's bank branch property.

Holdings: The Tax Court, Andresini, J.T.C., held that:

[1] property was not special purpose property subject to tax assessment under the cost approach rather than **income** capitalization approach;

[2] Court determined assessment value of bank property under **income** capitalization approach;

[3] Court lacked sufficient credible evidence with which to determine the value of the subject property using the cost approach; and

[4] Court revised the taxable value of the property by applying the average ratio to the true value of the property.

Ordered accordingly.

West Headnotes (45)

[1] Taxation Presumptions

Original assessments and judgments of county boards of taxation are entitled to a presumption of validity.

[2] Taxation Presumptions

The presumption of correctness of a tax assessment remains in place even if the municipality utilized a flawed valuation methodology, so long as the quantum of the assessment is not so far removed from the true value of the property or the method of assessment itself is so patently defective as to justify removal of the presumption of validity.

[3] Taxation Presumptions

The presumption of correctness of a property tax assessment stands until sufficient competent evidence to the contrary is adduced.

[4] Taxation Presumptions

To overcome the presumption of the correctness of a property tax assessment, the plaintiff must present sufficient evidence to raise a debatable question as to the validity of the assessment.

[5] Taxation Presumptions

When determining whether a party has overcome the presumption of correctness of a property tax assessment, the court should weigh and analyze the evidence as if a motion for judgment at the close of all the evidence had been made, employing the evidentiary standard applicable to such a motion; the court must accept as true the proofs of the party challenging the assessment and accord that party all legitimate favorable inferences from that evidence.

[6] **Taxation** Presumptions

To overcome the presumption of correctness of a property tax assessment, the evidence must be sufficient to determine the value of the property under appeal, thereby establishing the existence of a debatable question as to the correctness of the assessment.

[7] **Taxation** Proceedings for Review and Parties

Taxation Presumptions

Only after the presumption of correctness of a property tax assessment is overcome with sufficient evidence at the close of trial must the court appraise the testimony, make a determination of true value and fix the assessment; if the court determines that evidence produced is insufficient to overcome the presumption that the assessment is correct, the assessment shall be affirmed and the court need not proceed to making an independent determination of value.

1 Cases that cite this headnote

[8] **Taxation** Proceedings for Review and Parties

Taxation Presumptions

A finding that a taxpayer has overcome the presumption of correctness of a property tax assessment does not equate to a finding that the assessment is erroneous; to the contrary, the court's finding merely permits it to address the question of what value should be accorded to the subject property.

[9] **Taxation** Presumptions

Taxation Weight and Sufficiency of Evidence

Once the presumption of correctness of a property tax assessment is overcome, the court must then turn to a consideration of evidence adduced on behalf of both parties and conclude the matter based on a fair preponderance of the evidence.

[10] **Taxation** Burden of proof

Although there may be enough evidence to overcome the presumption of correctness of a property tax assessment at the close of taxpayer's case-in-chief, the burden of proof remains on the taxpayer throughout the entire case to demonstrate that the judgment under review was incorrect.

[11] **Taxation** Matters considered and methods of valuation in general

There is no single determinative approach to the valuation of real property.

2 Cases that cite this headnote

[12] **Taxation** Matters considered and methods of valuation in general

The choice of the approach to determine value of real property is case specific, as it depends upon the facts of each case and the reaction of the experts to those facts.

[13] **Taxation** Capitalized **income**

The **income** capitalization approach is the preferred method for estimating the value of **income** producing property.

3 Cases that cite this headnote

[14] **Taxation** Capitalized **income**

Income capitalization approach was most appropriate means of determining the value of real property, based on its current use as a bank branch.

1 Cases that cite this headnote

[15] **Taxation** Replacement cost; depreciation and obsolescence

Generally, "special purpose properties" subject to tax assessment under the cost approach rather than **income** approach will possess the following characteristics: they will be (1) unique and specially built for the purpose for which they are used, (2) without a market or comparable sales, (3) unlikely to be converted without substantial economic expenditure, and (4) reasonably expected to be replaced or reproduced if destroyed.

7 Cases that cite this headnote

[16] **Taxation** Replacement cost; depreciation and obsolescence

The only means for valuing a special purpose property is via the cost approach because there will be insufficient comparable market transactions.

4 Cases that cite this headnote

[17] **Taxation** Replacement cost; depreciation and obsolescence

Property does not qualify as a specialty subject to valuation under the cost approach rather than **income** approach where it possesses certain features which, while rendering the property suitable to the owner's use, are not truly unique.

2 Cases that cite this headnote

[18] **Taxation** Replacement cost; depreciation and obsolescence

Property should not be valued as a specialty, subject to assessment under the cost approach rather than **income** approach, merely because it contains certain features adapted to plaintiff's use.

[19] **Taxation** Replacement cost; depreciation and obsolescence

Property is best classified as "special purpose property," subject to assessment under the cost approach rather than **income** approach, where it is property that cannot be converted to other uses without large capital investment, such as a public museum, a church, or a highly-specialized production facility like a brewery.

6 Cases that cite this headnote

[20] **Taxation** Replacement cost; depreciation and obsolescence

Bank branch property was not special purpose property subject to tax assessment under the cost approach rather than **income** capitalization approach, although it was specifically built to be a bank branch with a purportedly unique, recognizable design; there was no showing that significant expenditures would be necessary or that it would be economically infeasible for the property to be converted to another use, or that it would be imperative to the community that the property be rebuilt as a bank branch were it destroyed, and there was no showing the property was one-of-a-kind or possessed any particular quality which made it uniquely suited to bank use.

[21] **Evidence** Necessity and sufficiency

An expert's bare opinion that has no support in factual evidence or similar data is a mere net opinion which is not admissible and may not be considered. N.J. R. Evid. 703.

[22] **Evidence** Necessity and sufficiency

An expert is required to give the why and wherefore of his opinion, rather than mere conclusions. N.J. R. Evid. 703.

[23] **Evidence** Sources of Data

Facts or data on which an expert opinion may be based include (1) the expert's personal observations, or (2) evidence admitted at the trial, or (3) data relied upon by the expert which is not necessarily admissible in evidence but which is the type of data normally relied upon by experts. N.J. R. Evid. 703.

[24] **Evidence** Necessity and sufficiency

An expert's bare conclusion, which is not supported by factual evidence, is inadmissible. N.J. R. Evid. 703.

[25] **Evidence** Necessity and sufficiency

An expert's failure to give weight to a factor thought important by an adverse party does not reduce his testimony to an inadmissible net opinion if he otherwise offers sufficient reasons which logically support his opinion. N.J. R. Evid. 703.

[26] **Evidence** Necessity and sufficiency

The net opinion rule requires that experts be able to identify the factual basis for their conclusions, explain their methodology, and demonstrate that both the factual bases and the methodology are reliable. N.J. R. Evid. 703.

[27] **Evidence** Certainty of testimony; probability, or possibility

Evidence Speculation, guess, or conjecture

An expert's conclusion is excluded if it is based merely on unfounded speculation and unquantified possibilities. N.J. R. Evid. 703.

[28] **Evidence** Necessity and sufficiency

Evidence Speculation, guess, or conjecture

An expert is not permitted to express speculative opinions or personal views that are unfounded in the record, nor may a party's burden of proof be satisfied by an expert opinion that is unsupported by the factual record or by an expert's speculation that contradicts that record. N.J. R. Evid. 703.

[29] **Evidence** Speculation, guess, or conjecture

When contradicting facts in the record, the expert must use his expertise or personal knowledge of the facts; speculation, alone, that a witness incorrectly stated the facts is an insufficient basis for an expert's conclusion. N.J. R. Evid. 703.

[30] **Evidence** Basis of Opinion

Expert opinion is valueless unless it is rested upon the facts which are admitted or proved. N.J. R. Evid. 703.

[31] **Evidence** Speculation, guess, or conjecture

Taxation Valuation

In the realm of tax appeals, an expert's reliance on subjective measures for calculation and application of adjustments is unacceptable.

3 Cases that cite this headnote

[32] **Evidence** Necessity and sufficiency

An expert's opinion is only as good as the data upon which the expert relied. N.J. R. Evid. 703.

5 Cases that cite this headnote

[33] **Evidence** Necessity and sufficiency

An expert's conclusion rises no higher than the data which provide the foundation. N.J. R. Evid. 703.

[34] **Evidence** Value

Taxation Valuation

Tax court has obligation to apply its own judgment to valuation data submitted by experts in order to arrive at a true value and find an assessment for the years in question.

2 Cases that cite this headnote

[35] **Taxation** Valuation

To enable the Tax Court to make an independent finding of true value, credible and competent evidence must be adduced in the trial record.

1 Cases that cite this headnote

[36] **Taxation** Valuation of Property

The Tax Court's independent determination of value must be based on the evidence before it and the data that are properly at its disposal.

[37] **Taxation** Capitalized **income**

Central to an **income** analysis is the determination of the economic rent, also known as the market rent or fair rental value; checking actual **income** to determine whether it reflects economic **income** is a process of sound appraisal judgment applied to rentals currently being charged for comparable facilities in the competitive area.

[38] **Taxation** Capitalized **income**

To be a reasonably comparable lease, a property must be substantially similar to the subject property being valued under the **income** approach.

[39] **Taxation** Capitalized **income**

When using comparable properties to determine true value under the **income** approach, the parties should use market transactions.

[40] **Taxation** Capitalized **income**

Court determined assessment value of bank property under **income** capitalization approach by accepting opinion that highest and best use was as bank branch location, considering comparable leases, applying 6% vacancy and collection rate, imposing 4% management fee, 4% brokerage fee, and 1% replacement reserves fee, as well as 1% miscellaneous fee for other costs of ownership, and then applying capitalization rate to convert net operating **income** determination into overall value.

3 Cases that cite this headnote

[41] **Taxation** Capitalized **income**

Special motivations may apply in a renewal situation, including the landlord's desire to retain the tenant, the tenant's desire not to incur the inconvenience and expense of relocation; thus a renewal rent, without extensive investigation, is a dubious basis for establishing market rent under the **income** approach to valuation.

[42] **Evidence** Capitalization of **income**; rents

Taxation Valuation

In using the Band of Investment technique to convert a single year **income** estimate into a value indication for a property, it is incumbent upon the appraiser to support the various components of the capitalization rate analysis by furnishing reliable market data to the court as the basis for the expert's opinion so that the court may evaluate the opinion.

3 Cases that cite this headnote

[43] **Taxation** Replacement cost; depreciation and obsolescence

The cost approach to valuation is particularly important when a lack of market activity limits the usefulness of the sales comparison approach and when the property to be appraised, e.g., single-family residences, is not amenable to valuation by the **income** capitalization approach.

1 Cases that cite this headnote

[44] **Evidence** Value

Taxation Valuation

Court considering cost approach to value of bank branch property would decline to give reproduction cost analysis any weight, and thus lacked sufficient credible evidence with which to determine the value of the subject property using the cost approach; while report used "calculator method," which involved looking at various tables, manually calculating the cost of the improvements, and multiplying the cost by current cost multipliers and then by local multipliers, expert admitted he instead used a computer program to calculate value, that program was not documented or verifiable, and

differences that resulted from the two methods were unexplained.

[45] Taxation Capitalized **income**

Court revised taxable value of bank branch property, determined pursuant to **income** approach, by applying the average ratio to the true value of the property, as average ratio for the municipality was below the county percentage level and the ratio of the assessed value of the subject property to its true value exceeded the county percentage level. N.J. Stat. Ann. § 54:51A–6b.

Attorneys and Law Firms

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Levi J. Kool for defendant (*O'Donnell McCord, P.C.*, attorneys). [1]

Opinion

ANDRESINI, J.T.C.

This is the court's opinion after trial in the above-referenced matter. Plaintiff, TD Bank, N.A. (the "Plaintiff" or "Taxpayer"), challenged the assessments imposed by Defendant, City of Hackensack (the "Defendant" or "City"), on the above-captioned properties for the referenced tax years. For the reasons stated more fully below, the assessment for each year is reduced.

I. *Procedural History and Findings of Fact*

This local property tax appeal concerns real property located at 111 River Street and 108–110 Moore Street in the City of Hackensack, designated as Block 204.01, Lot 16 and Block 204.01 Lot 26.01 respectively (the "subject property"), by the taxing district. The total assessment against the lots for each tax year challenged (2009, 2010 and 2011) is $3,568,500. The Chapter 123 ratio for each tax year is as follows: 94.20% for 2009 and 99.16% for 2010. There was a municipal-wide revaluation of all assessments for the 2011 tax year; therefore, Chapter 123 does not apply.

For the 2009, 2010, and 2011 tax years, the subject property (Block 204.01, Lots 16 and 26.01) was assessed as follows:

***373**

Block 204.01, Lot 16

	2009	2010	2011
Land	$976,800	$976,800	$683,700
Improvement	$1,355,100	$1,355,100	$1,648,200
TOTAL	$2,331,900	$2,331,900	$2,331,900

Block 204.01, Lot 26.01

	2009	2010	2011
Land	$1,235,500	$1,235,500	$864,900
Improvement	$19,100	$19,100	$389,700
TOTAL	$1,254,600	$1,254,600	$1,254,600

Block 204.01, Lots 16 and 26.01 Combined

	2009	2010	2011
Land	$2,212,300	$2,212,300	$1,548,600
Improvement	$1,374,200	$1,374,200	$2,037,900
TOTAL	$3,568,500	$3,568,500	$3,568,500

The Chapter 123 Corridor was as follows:

	2009	2010	2011
Assessment	$3,586,500	$3,586,500	$3,586,500
AVG. Ratio	94.20%	99.16%	100.00%
Lower Limit	80.07%	84.29%	
Upper Limit	108.33%	114.03%	

The subject property is an irregularly-shaped, rectangular lot situated on the northwestern corner of the intersection of River Street and East Atlantic Street in Hackensack. It has a frontage of 211 feet along River Street, 160 feet along East Atlantic Street, 202 feet along Moore Street, and 166 feet along the northerly boundary of the property. [2] The land on which the improvement sits was acquired under a deed executed in 2004 for a purchase price of $2,300,000. [3] The total lot size is 38,332 square feet. [4] The ***374** site is improved with all available public and private utilities including electric, water, sewer, and telephone. The property is located in the B2 business district zone, which permitted uses include retail stores and shops, art galleries, banks, drug stores, and multifamily dwellings. It is also situated within Designated Flood Hazard Zone AE.

The subject property, constructed in 2005, is improved with a one-story, 4,100 square foot [5] bank branch building offering four lanes of drive-through service. Inside, there is a main banking area with five teller positions, a safe deposit vault, two coupon booths, and two half-baths. The building also contains a kitchenette, a conference room, storage closets, and a utility room. The site is further improved with 36 lined parking spots and a well-maintained exterior landscaped area.

The exterior of the improvement consists of decorative block and metal sheet siding.

II. *Conclusions of Law*

At trial, each party presented one witness—a professional real estate appraiser—to offer an opinion as to the value of the property. The parties stipulated to the qualifications of the appraisers as experts. They also agreed that the two lots should be treated as a single economic unit. The experts both valued the subject property utilizing the **income** capitalization approach to valuation. Defendant's expert also employed the cost approach. Neither expert used the sales comparison approach.

The experts offered their opinions that the subject property had a true market value for each of the years as follows:

	As of 10/1/2008	As of 10/1/2009	As of 10/1/2010
Plaintiff's expert	$ 1,330,000.00	$ 1,185,000.00	$ 1,130,000.00
Defendant's expert	$ 3,500,000.00	$ 3,450,000.00	$ 3,600,000.00

a. *Presumption of Validity*

***375** **[1]** The court's analysis begins with the well-established principle that "[o]riginal assessments and judgments of county boards of taxation are entitled to a presumption of validity." *MSGW Real Estate Fund, LLC v. Borough of Mountain Lakes,* 18 *N.J.Tax* 364, 373 (Tax 1998). As Judge Kuskin explained, our Supreme Court has defined the parameters of the presumption as follows:

> The presumption attaches to the quantum of the tax assessment. Based on this presumption the appealing Taxpayer has the burden of proving that the assessment is erroneous. The presumption in favor of the taxing authority can be rebutted only by cogent evidence, a proposition that has long been settled. The strength of the presumption is exemplified by the nature of the evidence that is required to overcome it. That evidence must be "definite, positive, and certain in quality and quantity to overcome the presumption."
>
> [*Ibid.* (quoting *Pantasote Co. v. City of Passaic,* 100 *N.J.* 408, 413 (1985) (citations omitted)).]

[2] The presumption of correctness arises from the view "that in tax matters it is to be presumed that governmental authority has been exercised correctly and in accordance with law." *Pantasote, supra,* 100 *N.J.* at 413, 495 *A.*2d 1308 (citing *Powder Mill, I Assocs. v. Township of Hamilton,* 3 *N.J.Tax* 439 (Tax 1981)); *See also, Township of Byram v. Western World, Inc.,* 111 *N.J.* 222, 235, 544 *A.*2d 37 (1988). The presumption remains

> in place even if the municipality utilized a flawed valuation methodology, so long as the *quantum* of the assessment is not so far removed from the true value of the property or the method of assessment itself is so patently defective as to justify removal of the presumption of validity.
>
> [*Transcontinental Gas Pipe Line Corp. v. Township of Bernards,* 111 *N.J.* 507, 517, 545 *A.*2d 746 (1988) (citing *Pantasote, supra,* 100 *N.J.* at 415, 495 *A.*2d 1308).]

[3] **[4]** "The presumption of correctness ... stands, until sufficient competent evidence to the contrary is adduced." *Township of Little Egg Harbor v. Bonsangue,* 316 *N.J.Super.* 271, 285–86, 720 *A.*2d 369 (App.Div.1998) (citing *Byram, supra,* 111 *N.J.* at 235, 544 *A.*2d 37); *See also City of Atlantic City v. Ace Gaming, LLC,* 23 *N.J.Tax* 70, 98 (Tax 2006). To overcome the presumption, the plaintiff must present sufficient evidence to raise a debatable question as to the validity of the assessment. *MSGW Real Estate, supra,* 18 *N.J.Tax* at 376.

[5] **[6]** "In the absence of a *R.* 4:37–2(b) motion ... the presumption of validity remains in the case through the close of all ***376** proofs." *Id.* at 377 (citations omitted). When determining whether a party has overcome the presumption, the court should weigh and analyze the evidence "as if a motion for judgment at the close of all the evidence had been made pursuant to *R.* 4:40–1 (whether or not the defendant or plaintiff actually so moves), employing the evidentiary standard applicable to such a motion." *Ibid.* The court must accept as true the proofs of the party challenging the assessment and accord that party all legitimate favorable inferences from that evidence. *Id.* at 376 (citing *Brill v. Guardian Life Ins. Co. of Am.,* 142 *N.J.* 520, 535, 666 *A.*2d 146 (1995)). To overcome the presumption, the evidence "must be 'sufficient to determine the value of the property under appeal, thereby establishing the existence of a debatable question as to the correctness of the assessment.' " *West Colonial Enters. LLC v. City of Orange,* 20 *N.J.Tax* 576, 579 (Tax 2003) (quoting *Lenal Props., Inc. v. City of Jersey*

City, 18 *N.J.Tax* 405, 408 (Tax 1999)), *aff'd,* 18 *N.J.Tax* 658 (App.Div.2000), *certif. denied,* 165 *N.J.* 488, 758 *A.*2d 647 (2000).

[7] Only after the presumption is overcome with sufficient evidence at the close of trial must the court "appraise the testimony, make a determination of true value and fix the assessment." *Rodwood Gardens, Inc. v. City of Summit*, 188 *N.J.Super.* 34, 38–39, 455 *A.*2d 1136 (App.Div.1982) (citing *Samuel Hird & Sons, Inc. v. City of Garfield,* 87 *N.J. Super.* 65, 75, 208 *A.*2d 153 (App.Div.1965)). If the court determines that evidence produced is insufficient to overcome the presumption that the assessment is correct, the assessment shall be affirmed and the court need not proceed to making an independent determination of value. *Ford Motor Co. v. Township of Edison,* 127 *N.J.* 290, 312, 604 *A.*2d 580 (1992); *Global Terminal & Container Serv. v. City of Jersey City*, 15 *N.J.Tax* 698, 703–04 (App.Div.1996).

At the close of Plaintiff's case-in-chief, Defendant moved to dismiss the case for Plaintiff's failure to overcome the presumption of validity. The court denied the motion and placed a statement of reasons on the record.

***377** **[8]** **[9]** **[10]** Of course, a finding that Plaintiff has overcome the presumption of correctness does not equate to a finding that the assessment is erroneous. To the contrary, the court's finding merely permits it to address the question of what value should be accorded to the subject property. Once the presumption is overcome, the "court must then turn to a consideration of evidence adduced on behalf of both parties and conclude the matter based on a fair preponderance of the evidence." *Ford Motor Co., supra,* 127 *N.J.* at 312, 604 *A.*2d 580 (quotations omitted). "[A]lthough there may have been enough evidence to overcome the presumption of correctness at the close of Plaintiff's case-in-chief, the burden of proof remain[s] on the Taxpayer throughout the entire case ... to demonstrate that the judgment under review was incorrect." *Id.* at 314–15, 604 *A.*2d 580 (citing *Pantasote, supra,* 100 *N.J.* at 413, 495 *A.*2d 1308).

b. *Method of Valuation*

[11] **[12]** "There are three traditional appraisal methods utilized to predict what a willing buyer would pay a willing seller on a given date, applicable to different types of properties: the comparable sales method, capitalization of **income** and cost." *Brown v. Borough of Glen Rock,* 19 *N.J.Tax* 366, 376 (App.Div.) (citing Appraisal Institute, *The Appraisal of Real Estate* 81 (11th ed. 1996)), *certif. denied,* 168 *N.J.* 291, 773 *A.*2d 1155 (2001). "There is no single determinative approach to the valuation of real property." *125 Monitor Street, LLC v. City of Jersey City*, 21 *N.J.Tax* 232, 237–38 (Tax 2004) (citing *Hird & Sons, supra,* 87 *N.J.Super.* at 72, 208 *A.*2d 153), *aff'd,* 23 *N.J.Tax* 9 (App.Div.2005). The choice of the approach to determine value is case specific, as it depends "upon the facts of each case and the reaction of the experts to those facts." *Ibid.* (citing *City of New Brunswick v. Division of Tax Appeals,* 39 *N.J.* 537, 189 *A.*2d 702 (1963)).

Defendant urges that the cost approach is the more accurate method for determining the subject property's value as it is a nearly new, special purpose, owner-occupied bank branch, designed in the unique style of the owner-occupant. The cost ***378** approach is used to estimate the market value of relatively new properties and those that are not frequently bought or sold. Appraisal Institute, *The Appraisal of Real Estate,* 377–78 (13th ed. 2008). "In the cost approach, the appraiser analyzes the cost of the subject improvements by comparison to the cost to develop similar improvements as evidenced by the cost of construction of substitute properties with the same utility as the subject property." *Ibid.* The appraiser estimates the cost of the land and the cost to construct a reproduction of the existing structure, and then deducts all accrued deprecation in the property being appraised. *Ibid.* Unlike Defendant, Plaintiff's expert considered the cost approach but ultimately rejected it as speculative in part because it fails to adequately account for market forces, such as vacancy and supply and demand.

[13] Both experts relied on the **income** capitalization approach to value the subject property, though Defendant's expert used it as support for his cost approach valuation. The **income** capitalization approach is the preferred method for estimating the value of **income** producing property. *Parkway Village Apartments Co. v. Township of Cranford,* 9 *N.J.Tax* 199 (App.Div.1986), *aff'g* 8 *N.J.Tax* 430 (1985), *rev'd on other grounds,* 108 *N.J.* 266, 528 *A.*2d 922 (1987). In the **income** capitalization approach, an appraiser analyzes a property's capacity to generate future benefits and capitalizes the **income** into an indication of present value. *The Appraisal of Real Estate, supra,* at 445.

[14] In the court's opinion, the most appropriate means of determining the value of the subject property is capitalizing the **income** producible from its current use as a bank branch. *See Midlantic Operating Admin. v. Township of West Caldwell,* 20 *N.J.Tax* 446, 451 (Tax 2002); *United Jersey Bank–Peoples Trust of NJ v. Borough of Lincoln Park,* 11 *N.J.Tax* 549, 554 (Tax 1991); *See also* *Hull Junction Holding Corp. v. Borough of Princeton,* 16 *N.J.Tax* 68, 79 (Tax 1996) ("The **income** approach is ... the proper method for determining the value of [property which produces **income**].").

379 c. *Special Purpose Property

The court will first address an argument made by Defendant: that the subject is a special purpose property. It states that this property owner constructs its properties to comport with a unique design plan such that its customers immediately recognize the property as one operated by this specific owner upon laying eyes on it. It is on this basis that Defendant seeks to have the court implement the cost approach methodology. *See Dworman v. Borough of Tinton Falls,* 1 *N.J.Tax* 445, 452 (Tax 1980) ("The cost approach is normally relied upon to value special purpose or unique structures for which there is no market"), *aff'd,* 180 *N.J.Super.* 366, 434 *A.*2d 1134 (App.Div.), *certif. denied,* 88 *N.J.* 495, 443 *A.*2d 709 (1981); *See also* *Transcontinental Gas, supra,* 111 *N.J.* 507, 545 *A.*2d 746.

[15] **[16]** There are important traits which distinguish special purpose properties. Generally, they will possess the following characteristics: they will be (1) unique and specially built for the purpose for which they are used, (2) without a market or comparable sales, (3) unlikely to be converted without substantial economic expenditure, and (4) reasonably expected to be replaced or reproduced if destroyed. *Tenneco, Inc.–Tennessee Gas Pipeline Div. v. Cazenovia,* 104 *A.D.*2d 511, 512, 479 *N.Y.S.*2d 587 (N.Y. Sup. Ct. 1984); *appeal after remand,* 134 *A.D.*2d 772, 522 *N.Y.S.*2d 250 (1987), *appeal denied,* 72 *N.Y.*2d 803, 532 *N.Y.S.*2d 369, 528 *N.E.*2d 521 (1988); *see also* *Transcontinental Gas, supra* 111 *N.J.* at 526–28, 545 *A.*2d 746; *Hackensack Water Co. v. Borough of Old Tappan,* 77 *N.J.* 208, 216, 390 *A.*2d 122 (1978) (value of the property depends on continuation of current use and could not be used for any other purpose); *Assessors of Quincy v. Boston Consolidated Gas Co.,* 309 *Mass.* 60, 34 *N.E.*2d 623, 627 (1941) (improvement could not be used for any other purpose, and had very little removal value). Special purpose properties are often limited-market properties which have few potential buyers at a given time due to their specialized use, and often include manufacturing plants, railroad sidings, research and development properties, museums, schools, houses of worship, theaters, and sports arenas. *Appraisal of Real Estate, supra,* at 27–28, 271. They ***380** often have unique designs or special construction utility which provide a functional utility for the intended use, but have limited conversion potential which restricts utility for other uses. *Ibid.*; *General Motors Corp. v. City of Linden,* 22 *N.J.Tax* 95, 127 (Tax 2005). The only means for valuing a special purpose property is via the cost approach because there will be insufficient comparable market transactions. *Glen Pointe Associates v. Township of Teaneck,* 10 *N.J.Tax* 380, 388 (Tax 1989) (citing *Anaconda Co. v. Perth Amboy,* 157 *N.J. Super.* 42, 384 *A.*2d 531 (App.Div.1978), *vacated and remanded on other grounds,* 81 *N.J.* 55, 404 *A.*2d 1155 (1979), *aff'd,* 12 *N.J. Tax* 118 (App.Div.1990)).

[17] **[18]** **[19]** "However, property does not qualify as a specialty where it possesses certain features which, while rendering the property suitable to the owner's use, are not truly unique. *Dworman v.* [*Borough of*] *Tinton Falls, supra,* 1 *N.J.Tax* at 455. Property should not be valued as a specialty merely because it contains certain features adapted to plaintiff's use." *Sunshine Biscuits, Inc. v. Borough of Sayreville,* 4 *N.J.Tax* 486, 495 (Tax 1982). Property is best classified as special purpose where it is "property that 'cannot be converted to other uses without large capital investment,' such as a public museum, a church, or a highly-specialized production facility like a brewery." *Ford Motor Co., supra,* 127 *N.J.* at 299, 604 *A.*2d 580 (quoting *Sunshine Biscuits, supra,* 4 *N.J.Tax* at 495 n. 3).

[20] Defendant's argument is unavailing. While the property may have been built specifically as a bank branch, none of the other factors are present. Defendant has not shown that significant expenditures would be necessary or that it would be economically infeasible for the property to be converted to another use, nor has Defendant demonstrated that it would be imperative to the community that this property be rebuilt as a bank branch were it destroyed. No showing has been made that the subject is one-of-a-kind or possesses any particular quality which makes it uniquely suited to Plaintiff's use, as a reservoir or gas pipeline would to its owner or to

the community. *See* *Hackensack Water, supra.* The court does not agree that unique aesthetics which were "designed and constructed with very specific design materials," ***381** as Defendant suggests, make the subject a special purpose property. As a result, the court remains unmoved from its earlier determination that the **income** capitalization approach is the appropriate method of valuation.

d. *Expert Testimony*

[21] **[22]** **[23]** In addition to determining whether the expert's qualifications are acceptable, the trial court must also decide as to whether the expert's opinion is based on facts and data. Biunno, *Current N.J. Rules of Evidence,* comment 2 on *N.J.R.E.* 702 (2002). As construed by applicable case law, *N.J.R.E.* 703 requires that an expert's opinion be based on facts, data, or another expert's opinion, either perceived by or made known to the expert, at or before trial (citations omitted). "[A]n expert's bare opinion that has no support in factual evidence or similar data is a mere net opinion which is not admissible and may not be considered." *Pomerantz Paper Corp. v. New Community Corp.,* 207 *N.J.* 344, 371, 25 *A.*3d 221 (2011). The rule requires an expert "to give the why and wherefore" of his opinion, rather than mere conclusions. *Polzo v. County of Essex,* 196 *N.J.* 569, 583, 960 *A.*2d 375 (2008); *Jimenez v. GNOC, Corp.,* 286 *N.J.Super.* 533, 540, 670 *A.*2d 24 (App.Div.), *certif. denied,* 145 *N.J.* 374, 678 *A.*2d 714 (1996), *overruled on other grounds,* *Jerista v. Murray,* 185 *N.J.* 175, 883 *A.*2d 350 (2005). [6]

[24] **[25]** **[26]** **[27]** **[28]** **[29]** **[30]** *N.J.R.E.* 703 bars admission into evidence of a net opinion, which is not supported by factual evidence or other data. *Polzo, supra,* 196 *N.J.* at 583, 960 A.2d 375. "An expert's bare conclusion[ ], which is not supported by factual evidence, is inadmissible." *Buckelew v. Grossbard,* 87 *N.J.* 512, 524, 435 *A.*2d 1150 (1981). However, an expert's failure "to give weight to a factor thought important by an adverse party does not reduce his testimony to an inadmissible net opinion if he otherwise offers ***382** sufficient reasons which logically support his opinion." *Pierre v. Townsend,* 221 *N.J.* 36, 54, 110 *A.*3d 52 (2015); (citing *Rosenberg v. Tavorath,* 352 *N.J.Super.* 385, 402, 800 *A.*2d 216 (App.Div.2002)). However, the net opinion rule requires that experts " 'be able to identify the factual basis for their conclusions, explain their methodology, and demonstrate that both the factual bases and the methodology are reliable.' " *Ibid.* (quoting *Landrigan v. Celotex Corp.,* 127 *N.J.* 404, 417, 605 *A.*2d 1079 (1992)). "An expert's conclusion 'is excluded if it is based merely on unfounded speculation and unquantified possibilities.' " *Id.* at 55, 110 *A.*3d 52 (quoting *Grzanka v. Pfeifer,* 301 *N.J. Super.* 563, 580, 694 *A.*2d 295 (App.Div.1997)) (quoting *Vuocolo v. Diamond Shamrock Chem. Co.,* 240 *N.J. Super.* 289, 300, 573 *A.*2d 196 (App.Div.), *certif. denied,* 122 *N.J.* 333, 585 *A.*2d 349 (1990), *certif. denied,* 154 *N.J.* 607 (1998)). "[W]hen an expert speculates, 'he ceases to be an aid to the trier of fact and becomes nothing more than an additional juror.' " *Ibid.* (citing *Jimenez, supra,* 286 *N.J. Super.* at 540, 670 *A.*2d 24). An expert "is not permitted to express speculative opinions or personal views that are unfounded in the record." *Ibid.* Nor may "[a] party's burden of proof ... be satisfied by an expert opinion that is unsupported by the factual record or by an expert's speculation that contradicts that record." *Ibid.* When contradicting facts in the record, the expert must use his expertise or personal knowledge of the facts; speculation, alone, that a witness incorrectly stated the facts is an insufficient basis for an expert's conclusion. *See* *Id.* at 55, 110 *A.*3d 52. "Expert opinion is valueless unless it is rested upon the facts which are admitted or proved." *Stanley Co. of America v. Hercules Powder Co.,* 16 *N.J.* 295, 305, 108 *A.*2d 616 (1954) (citations omitted).

[31] **[32]** **[33]** It is well settled in the realm of tax appeals that an expert's reliance on subjective measures for calculation and application of adjustments is unacceptable. *Greenblatt v. Township of Englewood,* 26 *N.J.Tax* 41, 55 (Tax 2011) ("adjustments must have a foundation obtained from the market" with an "explanation of the methodology and assumptions used in arriving at the[ ] adjustments[ ]" otherwise they are entitled to little weight.). In *Dworman, supra,* 1 *N.J.Tax* at 458 (citations omitted), this court established that "[t]he opinion of an expert depends upon the facts ***383** and reasoning which form the basis of the opinion. Without explanation as to the basis, the opinion of the expert is entitled to little weight in this regard." Thus an expert's opinion is only as good as the data upon which the expert relied. *See* *Congoleum Corp. v. Township of Hamilton,* 7 *N.J.Tax* 436, 451 (Tax 1985) (Adjustments must be adequately supported by objective data.); *Kearny Leasing Corp. v. Township of Kearny,* 6 *N.J.Tax* 363, 376 (Tax 1984), *aff'd o.b.,* 7 *N.J.Tax* 665 (App.Div.1985), *certif. denied,* 102 *N.J.* 340, 508 *A.*2d 215 (1985). "An expert's conclusion rises no higher than the data which provide the foundation."

City of West Orange v. Goldman, 2 *N.J.Tax* 582, 588 (Tax 1981) (citations omitted). "Expert opinion unsupported by adequate facts has consistently been rejected by the Tax Court." *Hull, supra*, 16 *N.J.Tax* at 98 (citing *Willow/Leonia Assocs. v. Borough of Leonia,* 12 *N.J.Tax* 338, 344 (1992)).

[34] **[35]** **[36]** Still, the court is mindful of its obligation "to apply its own judgment to valuation data submitted by experts in order to arrive at a true value and find an assessment for the years in question." *Glen Wall Associates v. Township of Wall,* 99 *N.J.* 265, 280, 491 *A.*2d 1247 (1985) (citing *New Cumberland Corp. v. Borough of Roselle,* 3 *N.J.Tax* 345, 353 (Tax 1981)). However, to enable the court to make an independent finding of true value, credible and competent evidence must be adduced in the trial record. Here, the court was presented with factual information, data, and analysis of comparable property sales. The court's independent determination of value must be based "on the evidence before it and the data that are properly at its disposal." *F.M.C. Stores Co. v. Borough of Morris Plains,* 100 *N.J.* 418, 430, 495 *A.*2d 1313 (1985). With these precedents in mind, the court examines the experts' reports and testimony, and makes the findings discussed below.

III. *Income Capitalization Approach*

i. *Market Rent*

[37] "Central to an **income** analysis is the determination of the economic rent, also known as the 'market rent' or 'fair rental value.' " *Parkway Village, supra,* 108 *N.J.* at 270, 528 *A.*2d 922. ***384** "Checking actual **income** to determine whether it reflects economic **income** is a process of sound appraisal judgment applied to rentals currently being charged for comparable facilities in the competitive area." *West Colonial Enters., supra,* 20 *N.J.Tax* at 583 (quoting *Harclay House v. City of East Orange,* 18 *N.J.Tax* 564, 568 (Tax 2000), *aff'd* 344 *N.J.Super*. 296, 19 *N.J.Tax* 566, 781 *A.*2d 1085 (App.Div.2001), *certif. denied,* 171 *N.J.* 338, 793 *A.*2d 716 (2002)). The parties first determine the total potential gross **income** attributable to the subject at full occupancy. *The Appraisal of Real Estate, supra,* at 457.

[38] **[39]** Both experts provided the court with six leases which they deemed comparable to the subject property for the purpose of determining market rent. To be a reasonably comparable lease, a property must be substantially similar to the subject. *Congoleum Corp., supra,* 7 *N.J.Tax* at 445. When using comparable properties to determine true value, the parties should use market transactions. Market rent is defined as "[t]he most probable rent that a property should bring in a competitive and open market reflecting all **conditions** and restrictions of the typical lease agreement." *Appraisal of Real Estate, supra,* at 453.

Plaintiff's Analysis

Plaintiff's expert classified the subject property as "average—good Class C" bank branch building as categorized by the Marshall and Swift cost estimating service. In preparing his report, the expert used 1999 as the year of construction, however, at trial, the expert conceded that the property was actually constructed in 2005. More tellingly, he admitted he did not verify the construction date by looking at the deeds or the owner's records prior to completing the reports.

In the appraisal report submitted to the court, Taxpayer's expert analyzed five net bank branch leases and one gross lease, which he characterized as typical leases in the area. He selected comparable leases for properties with what he deemed to be the same highest and best use as the subject.

The report also includes a non-exhaustive survey of what the expert described as the northern New Jersey market for bank ***385** branch leases, which purports to demonstrate the abundance of available bank branch locations during the relevant time period, and the corresponding decline in demand and asking prices. He maintains this shift started after mid–2007 and was caused by the financial crisis which occurred at that time. According to the expert, between 2009 and 2012, there was a myriad of similar properties available for purchase or rent, resulting in a saturation of the market for bank branch locations in the area; thus they were not in demand, making them less valuable. Based on a paired lease analysis and "market study," the expert determined that bank branch rents were rising moderately until the third quarter of 2007, and then declined thereafter. Therefore, he made adjustments based on the timing of each comparable lease's inception, applying a positive 2.5% annual adjustment up to October 1, 2007 and applying a negative annual adjustment of 2.5% per annum thereafter. [7]

The expert then made two adjustments based on location. The first is a 5% downward adjustments to five of the six comparables [8] because the per capita **income** of residents living within a one-mile radius of those locations was

significantly, according to the appraiser, higher than the per capita **income** of people living within one mile of the subject property. The second is a 5% positive adjustment to all his comparables because the subject property is located in a busy business district, in a county seat, near a courthouse and county administration buildings while the comparable leases were not located in such visible or highly trafficked areas. Except for the one lease with no per capita adjustment, the two adjustments are offsetting and constitute the 0% location adjustment in the report's adjustment grid.

***386** The final adjustments were made for physical **condition**, which the appraiser defined as building size, configuration, building quality, parking access, the presence or absence of drive-through access, and other similar components.

Plaintiff's comparable lease 1, dated January 1, 2007, is for a 2,400 square foot building located at 115 Broadway, Elmwood Park, Bergen County. It does not offer drive-through service, but is a stand-alone building. The lease covers a five-year term at a net rental value of $30.08 per square foot. The expert made all of the adjustments stated above. The expert also made a positive 5% adjustment for the comparable's lack of drive-through access. The resulting adjusted economic rent per square foot for each tax year is $32.89 in 2009, $32.06 in 2010, and $31.27 in 2011.

Plaintiff's comparable lease 2, dated April 17, 2007[9] is for 5,156 square feet of space in the mixed-use, multi-tenanted bank and office property located at 550 Kinderkamack Road, Oradell, Bergen County. The bank offers three lanes of drive-through service. The lease covers a five-year term at a net rental value of $27.00 per square foot. To this comparable, Plaintiff's expert made the adjustments listed above and a 5% positive physical adjustment for the comparable's larger size, resulting in an adjusted economic rent of $28.01 in 2009, $27.30 in 2010, and $26.62 in 2011.

Plaintiff's comparable lease number 3, dated April 1, 2009, is for a 2,545 square foot building located at 995 Bloomfield Avenue, West Caldwell, Essex County. The site offers two-lanes of drive-through service and is a stand-alone facility. The lease covers a five-year term with a net rental value of $35.00 per square foot. Plaintiff's expert made the adjustments listed above, resulting in an adjusted economic rent of $35.46 in 2009, $34.58 in 2010, and $33.71 in 2011.

Plaintiff's comparable lease 4, dated November 1, 2010, is for a 2,927 square foot space located at 161 North Franklin Boulevard, ***387** Ramsey, Bergen County. The site offers two-lane drive-through service and is located inside a mixed-use office and bank building. Plaintiff's expert found the net rental value was $25.03 per square foot after deducting $4 per square foot for taxes. The expert then made the adjustments listed above and a positive 5% physical adjustment due to the comparable's lesser quality of construction, resulting in an adjusted economic rent of $27.67 in 2009, $26.99 in 2010, and $26.33 in 2011.

Plaintiff's comparable lease 5, dated March 1, 2008, is for a 3,000 square foot building located at 328 South Avenue, Fanwood, Union County. The site offers three lanes of drive-through service and is a stand-alone bank branch. The lease covers a fifteen year term at a net rental value of $35 per square foot. Plaintiff's expert made the adjustments listed above and a negative 5% physical adjustment for the comparable's newer **condition**,[10] resulting in an adjusted economic rent of $32.78 in 2009, $31.95 in 2010, and $31.16 in 2011.

Plaintiff's comparable lease 6, dated August 9, 2010, is for a 2,500 square foot space located at 350 Ramapo Valley Road, Oakland, Bergen County. The site offers a one-lane drive-through facility and is situated in a strip mall. The lease covers a ten year term at a net rental value of $32 per square foot. Plaintiff's expert made the adjustments listed above, resulting in an adjusted economic rent of $33.50 in 2009, $32.67 in 2010, and $31.87 in 2011.

Having made the adjustments, Taxpayer's expert calculated the average rent of the six properties to be $31.72 per square foot for tax year 2009, $30.93 in 2010, and $30.16 in 2011, and determined that the market value of the subject property is $32 per square foot in tax year 2009, $31 in 2010, and $30 in 2011. Applying the rental figures to the 4,050 square feet of the subject property,[11] ***388** Plaintiff proposes that the Potential Gross **Income** ("PGI") of the subject property is $129,600 in tax year 2009, $125,550 in 2010, and $121,500 in 2011.

Defendant's Analysis

Defendant's expert relies upon six bank branch leases, five of which are located in Bergen County. All of the leases are for stand-alone bank branch buildings to which the expert made adjustments based on time, location, building size, **condition**

of the building, and the quality of the drive-through facilities. His time adjustments were based upon an analysis of bank sales and leases during the time in question. He concluded that the market was rising 5% annually until 2007 and then stayed relatively flat thereafter.

Defendant's comparable lease 1, dated January 1, 2006, is for a 2,825 square foot building located at 325 Garden Street, Carlstadt, Bergen County. The site offers two-lanes of drive-through service. The lease is for a term of ten years with an average net rental value of $42.24 per square foot during the first five years. The expert made a positive 9% adjustment for time, a positive 10% adjustment for location, a negative 5% adjustment for building size, and a positive 5% positive adjustment for the quality of the drive through. After making adjustments, the resulting economic rent is $50.65 for the years under review.

Defendant's comparable lease 2, dated July 1, 2007, is for a 4,536 square foot building located at 1045 Clifton Avenue, Clifton, Passaic County. The site offers two-lanes of drive-through service. The lease is for a 10 year term with a net rental value of $37.91 per square foot over the first five years. The expert made a positive 1% adjustment for time, a positive 10% adjustment for location, a positive 5% adjustment for building size, a positive 20% adjustment for **condition** due to the building's age, and a positive 5% adjustment for the number of drive-through lanes. After making the adjustments, the resulting economic rent is $53.60 for the years under review.

Defendant's comparable lease 3, dated August 29, 2008, is for a 2,766 square foot building located at 5 Washington Avenue, Dumont, ***389** Bergen County. The site offers two-lanes of drive-through service. The lease is for a term of twenty years with an average net rental value of $65.00 per square foot during the first five years. The expert made a negative 5% adjustment for building size and a positive 5% adjustment for the number of the drive-through lanes. Because the adjustments were offsetting the adjusted rent per square foot is $65.00.

Defendant's comparable lease 4, dated February 6, 2009, is for a 4,280 square foot building located at 803 Route 17 South, Paramus, Bergen County. The site offers two bays of drive-through service. The lease is for a five year term with a net rental value of $49.36 per square foot. The expert made a negative 5% adjustment for size and a positive 5% adjustment for the number of drive-through lanes. Because the adjustments were offsetting the adjusted rent per square foot is $49.36.

Defendant's comparable lease 5, dated April 15, 2010, is for a 4,207 square foot building located on Spring Valley Road, Paramus, Bergen County. The site offers three bays of drive-through service. The lease is for a twenty year term with an average net rental value of $61.80 per square foot over the first five years. The expert made a positive 5% adjustment for building size and a negative 5% adjustment for **condition**, resulting in an adjusted rent per square foot of $61.80.

Defendant's comparable lease 6, dated August 1, 2011, is for a 2,325 square foot building located at 19 County Road, Cresskill, Bergen County. The site offers two-bays of drive-through service. The lease is for a fifteen year term with an average net rental value of $64.25 per square foot over the first five years. After making 5% negative adjustments for building size and **condition** and a positive 5% adjustment for the number of drive-through lanes, the expert determined that the adjusted economic rent of the comparable is $61.29 per square foot for all the years under review.

Defendant's expert calculated that the average rent of the six properties was $56.95 per square foot for tax years 2009, 2010, and 2011, and determined that the market value of the subject property ***390** was $60 per square foot. Applying the rental figures to the 4,144 square feet of the subject property, [12] the expert concluded that the PGI of the subject property was $248,600 per square foot for the years in question.

The Court's Analysis

[40] The court accepts the experts' opinions that the highest and best use for the subject property as improved is its current use—as a bank branch location.

At the outset, the court notes that the weight it gives Taxpayer's expert's testimony and analysis is affected by the fact that he used an incorrect construction date in his report. As such, the court finds that his testimony is less reliable and will be afforded less weight as indicated below. During cross-examination, Defendant demonstrated that Plaintiff's expert did not verify his information with the property record cards for the two lots, which clearly indicate that the subject property was constructed in 2005. He also failed to review the deed of purchase for the subject, and failed to engage in discussions with Taxpayer to determine what, in the court's

view, are easily verifiable facts. Plaintiff's expert provided conflicting testimony regarding his time analysis, wherein his reports indicates 2.5% annual adjustment, but he testified to 5% adjustments. He also provided conflicting testimony on other issues at trial.

The court does not give weight to the expert's "Market Overview" section listing several bank branch facilities which he states were on the market during the relevant time period. That section provides little more information than the rental rates at which landlords were seeking to lease their properties. There is no method of independent verification for any of the information provided, and assuming its accuracy, that the higher rates sought by those landlords, which were subsequently abandoned for the lower rates listed in the report, were reasonable. No evidence has been offered to that effect. The expert also did not include any ***391** information regarding prior leases for those properties in order to confirm, in fact, that the market was forcing landlords to accept lower rents. There was no information offered regarding the sizes of these banks, their dates of construction, in some cases whether they are free-standing, or whether these banks offer drive-through service. In short, there is no evidence to suggest that any of these properties is even remotely comparable to the subject. Without any of this information, the court has no choice but to find that any conclusion based on these facts, without more, is unsupported.

[41] The court is not persuaded by Plaintiff's time adjustment. Notwithstanding the contradiction in the expert's report and testimony, the adjustment is also based on the expert's "Market Overview" section, which the court, as stated above, does not find it credible. To the extent the expert asks the court to rely on the existence of vacant bank branch properties as evidence of a market decline, the court will not do so. It would be duplicative to give them any weight here as they would have contributed to the vacancy rate, applied below. Additionally the assertion that the expert's practice has observed a decline in the market is not accepted, as it is not based on any data which was made available to the court or which could be examined by Defendant. No third party analysis was provided to show a market decline. Finally, the court finds the expert's paired lease analysis, [13] which includes only two data points, to be insufficient to extrapolate into a determination that the market was in decline. Lease 6 was a renewal, such that a drop in rent could be attributable to a number of other factors unrelated to market **conditions** and which were not ruled out by Plaintiff. "Special motivations may apply in a renewal situation—the landlord's desire to retain the tenant, the tenant's desire not to incur the inconvenience and expense of relocation. Thus a renewal rent, without extensive investigation ***392** (apparently not done by defendant's appraiser), is a dubious basis for establishing market rent." *International Flavors & Fragrances, Inc. v. Borough of Union Beach,* 21 *N.J.Tax* 403, 429 (Tax 2004). [14] The appraiser did not eliminate any of these possibilities. For Lease 4, too, the expert failed to eliminate the possibility that rent declined due to factors other than a decline in the market; he simply pointed to the lower rent for the second term as evidence of a market decline. The expert's assumption is not one that the court can adopt, as it is not based on any facts. [15] The court does not find the adjustments for time to be well supported.

Our Supreme Court has held "value for purposes of taxation has some measure of permanence which renders it secure against general temporary inflation or deflation." *Hull, supra,* 16 *N.J.Tax* at 96 (quoting *Hackensack Water Co. v. Division of Tax Appeals,* 2 *N.J.* 157, 163, 65 *A.*2d 828 (1949)). Indeed, this jurisdiction has recognized that "true value must be fairly constant and must be gauged by **conditions**, not temporary and extraordinary, but by those which over a period of time will be regarded as measurably stable." *Ibid.* (quoting *Berkley Arms Apartment Corp. v. City of Hackensack,* 6 *N.J.Tax* 260, 286 (Tax 1983)). **Stabilized income** is defined as

> **income** at that point in time when abnormalities in supply and demand or any additional **transitory conditions** cease to exist and the existing **conditions** are those expected to continue over the economic life of the property; projected **income** that is subject to change, but has been adjusted to reflect an equivalent, stable annual **income**.
>
> [The Appraisal Institute, *The Dictionary of Real Estate Appraisal,* 185 (5th ed. 2010)].

The court is also aware that there was a sharp national economic downturn which started in 2007 or 2008. However, there is ***393** nothing in the record which demonstrates how the market changes may have affected bank branches specifically. The court cannot take notice of general economic **conditions** to then use as a basis to support Plaintiff's proposition that there was a decline in bank branch values, much less quantify that suggested decline. It would be excessive for the court to allow adjustments beyond the economic changes which would already be reflected by the

agreed upon renal rate for each comparable lease. Thus, the court finds that an adjustment for market **conditions** must be disallowed because it is not based on any credible market data.

Other adjustments were not adequately explained. The expert made upward adjustments of five percent to all six of his comparable leases due to the subject property's location in downtown Hackensack, which he viewed to be a better location. When asked why he made a five percent adjustment, rather than a six percent adjustment or any other number, he stated that, "There's no way to really quantify specifically from any market derived calculation, it seemed like the —the adjustment was warranted and I applied my best judgment in that regard." The court finds that this adjustment was not based on any data and for the reasons set forth in the cases cited above, the court views it as unreliable. Likewise, adjustments for age are rejected because they are not supported. [16]

The expert's negative 5% adjustment to five of the six properties based on the per capita **income** of the surrounding areas is ***394** also rejected. At trial, he testified that he knew of no analysis that supported the conclusion that there is a positive correlation between bank branch rents and the per capita **income** of surrounding residents. Because there were no facts or data presented which show a correlation between per capita **income** and bank branch rents, the court considers this adjustment to be suspect when analyzed under the framework set forth above, and it is rejected.

Upon examination of the expert's report, testimony, and reasons for selecting leases, only one lease suggested by the Plaintiff is entitled to any weight. Comparable lease 1 is afforded no weight on the basis that it does not provide any drive-through service and the lot is too small, as the City's expert points out, to support the subject improvement or any bank branch which does include drive-through bays. In the court's view, Plaintiff's lease 1 is not comparable to the subject property and will not be given any weight in the court's analysis.

In analyzing comparable lease 5, the expert only used part of the lease. A subsequent work order which the lessee bank included in the transaction was not reviewed by the expert. It is incumbent upon experts to verify the information upon which they rely. *The Appraisal of Real Estate, supra,* 304 ("Appraisers should verify information with a party to a transaction to ensure its accuracy and to gain insight into the motivations behind each transaction. The buyer's and seller's views of precisely what was being purchased at the time of the sale are important."). The lease will not be relied upon by the court because it was not reviewed and all of the terms could not have been verified. Moreover, tenant's use of the property was non-exclusive; it was required to allow a neighboring property to use the parking lot and there was another building located on the lot. The court views this property as too dissimilar to be comparable and it is afforded no weight.

***395** Plaintiff's leases 2, 4, and 6 all were located in mixed-use buildings. The court views that difference to be important, making them insufficiently comparable to the subject.

Only comparable lease three is given any weight. It is only one of two leases submitted by Taxpayer for a bank branch in a free-standing building with drive-through service. [17] The expert testified at trial that he did not review comparable lease 3, but that he did review the terms of the transaction. The court is satisfied that the expert verified the terms of the lease. Without adjustments, the court considers this lease at the unadjusted $35.00 per square foot for all of the tax years subject to this opinion.

Defendant's leases share some of the same problems as Plaintiff's. In the case of comparable lease 2, the lease is an extension of a prior lease. Moreover, the lease terms were agreed to more than three years in advance of the first valuation date of this appeal, while the lease term did not begin until more than two years after the signing date. The parties' agreement with respect to the annual rent could not have been based entirely on what the market would demand during the years under review, since they fixed the rental amount far in advance. Finally, there is a discrepancy with respect to the square footage, with the amended lease indicating a rental area approximately 800 square feet greater than the amount in the expert report. For all those reasons, the court will not give lease 2 any weight.

Both comparable leases 5 and 6 were actually land leases. The tenants constructed both improvements, a fact for which there were no adjustments by the expert. The expert did suggest that the leases were still viable because a lease for the land and the improvement would warrant a higher rental rate than a lease for only land. The court, however, finds that this statement is unsupported, and that fundamentally, these land leases are not comparable due to the nature of the transactions by which they were leased.

***396** The court finds that Defendant's lease 1 to be a comparable lease probative of the subject's true value. Plaintiff contends that the lease does not represent a market transaction, based on the fact that one of the bank directors was also a partner of the lessor, and that it should not be considered. However, Defendant's expert pointed out that the New Jersey Department of Banking and Insurance conducted a rental study which concluded that the agreed-upon rent was within market prices. *N.J.A.C.* 3:1–10.2 requires a bank which purchases or leases premises from an affiliated party to "file a detailed real estate application concerning the proposed transaction with the Commissioner for his or her approval." *N.J.A.C.* 3:1–10.3 requires the Commissioner to deny the application unless the Commissioner is satisfied that

> (1) the terms and **conditions** of the proposed transaction are in the best interests of the institution; and (2) The applicant provides a written attestation of an independent appraiser that the terms and **conditions** of the proposed transaction are equal to or better than those which the institution would have obtained hat the premises been ... leased in an arm's length transaction with a non-affiliated third party.

The court, therefore is satisfied that use of this lease is proper.

Defendant's comparable leases 3 and 4 will also be given weight by the court. On cross-examination of lease 4, which was new construction, Defendant's expert stated that the tenant had to obtain approvals for development and that he did not know if the tenant provided any of the financing for construction. Plaintiff alleges that this fact negates lease 4 as a market transaction. The court is not persuaded that the fact that the tenant obtained the approvals affects the comparability of this lease. Plaintiff's additional suggestion that the tenant may have helped finance the construction is not based on any fact in the record and will not affect the court's analysis. Consideration of both leases is proper.

Though Defendant's expert did explain why he made adjustments for market **conditions**, time, location, building size, age/**condition**/quality, or drive-through he did not explain how he arrived at the quantum of those adjustments or support his conclusions with market data. [18] For example, the expert made location ***397** adjustments for what he described as inferior locations of two of the comparable leased properties. He made a 10% upward adjustment for that difference, but did not explain how he arrived at that number or state that it was based on any market data or other information which would typically be relied upon by someone with his expertise. For that reason, the court cannot determine if 10% is the correct amount of adjustment, or if the adjustment is actually 5% or 15%. The court therefore, in accordance with precedent establishing requirements for experts, cannot accept Defendant's expert's adjustments. The expert did not satisfy the standard set forth above because he failed to explain the "whys and wherefores." As a result, leases 1, 3, and 4 will be considered at their face rental values of $42.24, [19] $65.00 and $49.36 respectively.

ii. *Vacancy and Collection Rate*

Next, the parties reduced their potential gross **income** determinations by their determinations as to the vacancy rate, which resulted in effective gross **income**. *See Appraisal of Real Estate, supra,* at 457.

Both experts calculated the vacancy and collection rate based on their own survey of available branches and analysis of market **conditions**. Plaintiff's expert found that the vacancy and loss factor is 5% for tax year 2009, 7.5% for tax year 2010, and 8.5% for ***398** tax year 2011. Defendant's expert used a **stabilized** 4% vacancy and collection rate for all years covered by this appeal.

Plaintiff's expert arrived at his vacancy and collection rate by conducting a market overview of bank branch locations in Bergen County and by interviewing banking personnel whose responsibility is leasing bank branches. The results of his analysis revealed that since 2007 there has been a glut of available bank branch locations, resulting in a decline in demand and rental rates. The expert demonstrated that between 2007 and 2011 the number of FDIC insured institutions in New Jersey declined by 16%, but did not state whether that decline occurred primarily in any specific area of New Jersey or if the decline resulted from a number of mergers and acquisitions which may have occurred during that time period. He also did not know if there were fewer bank branch locations operating in northern New Jersey during the years under review.

In calculating his vacancy and loss factor, Defendant's expert "reviewed the historical vacancy at the subject property, surveyed the local market, had conversations with market participants, and reviewed market studies." He reviewed a "Brunelli & Co." report of vacancy rates along New Jersey's major highways and testified 0.5% of his 4% vacancy and non-collection rate is attributable to non-collection. The Brunelli & Co. report indicates that vacancy rates were never lower than 4% during the years in question, yet the expert used lower numbers for his vacancy rate.

Based on a review of the testimony, the documents submitted into evidence, and after giving due consideration to the appraisers' sources of information, the court finds that the appropriate vacancy and collection rate is 6%.

iii. *Operating Expenses*

The experts each calculated an operating expense rate which they used to reduce the subject's effective gross **income** to produce net operating **income**. *See The Appraisal of Real Estate, supra,* at 457.

The largest difference between the two experts in their calculations of operating expenses was Plaintiff's inclusion of broker fees ***399** and a miscellaneous fee. Both experts calculated their operating expenses based upon published studies and conversations with professionals in the field.

Plaintiff's expert attributed a management fee of 4% to the subject property. The expert relied on Price Waterhouse Cooper's "Net Lease Management Fees" category of the "PwC Investor Survey," interviews with bank portfolio managers, and providers of management services when determining his management and brokerage fees. Based upon his review of published studies and his conversations, Plaintiff's expert opined that these fees generally range from 3% to 5%. He also attributed an additional real estate brokerage fee of 5% to the subject property based upon a review of those same sources.

Defendant's expert determined that the management and leasing fees of the subject property would be 5% based upon his experience within the market and a review of market publications, including the PwC Investor Survey of national strip mall centers, as he found this report to be the one most closely related to the subject property. He testified that management fees include administration, accounting, brokerage fees, and legal expenses were included in his calculation. The expert attributed 3% to management and 2% to real estate brokerage fees. Defendant admits that the average management fee from the "PwC Investor Survey" was 3.53% for the years under appeal and that the average leasing commission was 4.45%; he used lower rates because the rates for bank branches are lower than the rates for national strip shopping centers. [20]

Even accepting the numbers contained in the PwC surveys as reliable, the court does not agree with Plaintiff's conclusion on this issue. Plaintiff's expert's surveys show an average net lease brokerage fee of 3.8%, while he used a 5% rate. The expert did not adequately explain the discrepancy between the average contained in the studies he relied upon and his determination of the ***400** brokerage fee. In light of the above-referenced precedents, the court finds that a 4% management fee and a 4% brokerage fee, based on the evidence and testimony of the experts, to be reasonable.

Both experts also applied a replacement reserves fee. Plaintiff's expert relied upon the "Kopacz Investor Survey Reserve Allowances" to determine that the appropriate fee for the building was $0.35 per square foot, or 0.74%. Defendant's expert stated that the cost of reserves for replacement would be 2% of the effective gross **income**, but failed to supply any explanation of how he arrived at that number. The court finds that a 1% replacement reserves fee is appropriate.

Plaintiff's expert also included a 1% miscellaneous fee for other costs of ownership such as professional fees, excess insurance, bank charges, carrying costs during periods of vacancy, and other incidental costs of ownership that are not accounted for in the other categories of expense. The court finds that a 1% charge is supported by the record.

iv. *Capitalization Rate*

The experts each developed a capitalization rate to convert their net operating **income** determinations into overall values. The overall capitalization rate is an "**income** rate for a total real property interest that reflects the relationship between a single year's net operating **income** expectancy and the total property price or value." *The Appraisal of Real Estate, supra,* at 462. The overall capitalization rate is "used to convert net operating **income** into an indication of overall property value." *Ibid.*

Plaintiff's Approach

Plaintiff's expert did not offer a market derived capitalization rate. He stated that there was insufficient data for analysis as he was unable to find **stabilized** building sales with brokerage commissions, rent commissions, tenant improvement allowances, rent levels, remaining lease terms, renewal options, and expense and recovery options similar to those of the subject property.

***401** Instead, the expert relied upon PwC's investor survey, the Real Estate Research Corporation's ("RERC") investor survey, and the American Council of Life Insurance's ("ACLI") published quarterly investment bulletin to develop a capitalization rate. He determined that the property was a RERC Tier 2 property,[21] and considered the rates for the third and fourth quarters of 2008, 2009, and 2010. This produced a reconciled RERC overall capitalization rate of 8.75% for the 2009 tax year, 9.00% for the 2010 tax year, and 8.75% for the 2011 tax year.

The appraiser also looked to the American Council of Life Insurance's capitalization rates on retail worth less than $2,000,000. Using the relevant data, the expert determined that the ACLI capitalization rates were 8.10% for tax year 2009, 8.75% for tax year 2010, and 9.00% for tax year 2011.

[42] The expert also relied on the Band of Investment technique, which includes a component reflecting the requirements of assumed mortgage financing, based on market factors, and a component reflecting the requirements of the equity investor. "This technique is a form of 'direct capitalization' which is used 'to convert a single year's **income** estimate into a value indication.' The technique includes both a mortgage and an equity component." *Hull, supra,* 16 *N.J.Tax* at 80–81 (Tax 1996) (citing Appraisal Institute, *The Appraisal of Real Estate* at 467 (10th ed. 1992)).

> Because most properties are purchased with debt and equity capital, the overall capitalization rate must satisfy the market return requirements of both investment positions. Lenders must anticipate receiving a competitive interest rate commensurate with the perceived risk of the investment or they will not make funds available. Lenders generally require that the loan principal be repaid through periodic amortization payments. Similarly, equity investors must anticipate receiving a competitive equity cash return commensurate with the perceived risk, or they will invest their funds elsewhere.
>
> [*The Appraisal of Real Estate, supra,* at 505.]

In "using the Band of Investment technique, it is incumbent upon the appraiser to support the various components of the capitalization ***402** rate analysis by furnishing 'reliable market data ... to the court as the basis for the expert's opinion so that the court may evaluate the opinion.' " *Hull, supra,* 16 *N.J.Tax* at 82 (quoting *Glen Wall Assocs. v. Township of Wall,* 99 *N.J.* 265, 279–80, 491 *A.*2d 1247 (1985)). "For these purposes, the Tax Court has accepted, and the Supreme Court has sanctioned, the use of data collected and published by the American Council of Life Insurance." *Id.* at 82–83. Appraisers may also use data collected and published by Korpacz Real Estate Investor Survey. *Id.* at 83. "By analyzing this data *in toto,* the court can make a reasoned determination as to the accuracy and reliability of the mortgage interest rates, mortgage constants, loan-to-value ratios, and equity dividend rates used by the appraisers." *Ibid.*

In his band of investment analysis for tax year 2009, the expert used a 6.75% interest rate for his mortgage component, a 22–year mortgage amortization period, and a 7% equity-dividend rate. After adopting a 65% loan-to-value ratio, his band of investment analysis produced an 8.13% capitalization rate. For tax year 2010, he assumed a 7.00% mortgage interest rate, a 65% loan-to-value ratio, a 25–year amortization period, and an equity-dividend of 9.00%, resulting in a band of investment capitalization rate was 8.66%. For tax year 2011, Plaintiff's expert used a 6.25% mortgage interest rate, a 20–year amortization period, a 65% loan-to-value ratio, and a 9.00% equity dividend, resulting in a rate of 8.85%.

After analyzing each of the different methods, Plaintiff submitted to the court its final determination that the capitalization rate for the subject property of 8.25% for tax year 2009, 8.75% for tax year 2010, and 8.75% for tax year 2011.

Defendant's Approach

Defendant's expert was able to develop a market derived capitalization rate by analyzing the sale of the property in comparable lease 1, discussed above, in Carlstadt, Bergen County. The sale price of the land and building was $1,675,000 and the net operating **income** was $117,040. This rendered a capitalization rate of 6.99%.

***403** The expert also relied upon both the PwC survey and ACLI's "Commercial Mortgage Commitments," with the caveat that the ACLI's tables were of limited use because a local bank was more apt to lend on the subject property than a large life insurance company. The expert explained that his selection was based "upon published data as well as [his] knowledge of the mortgage interest rates and the local market."

In his band of investment analysis for tax years 2009 and 2010, Defendant's appraiser posited a 5.50% interest rate for his mortgage component, a 25 year amortization period, a 70% loan-to-value ratio, and a 6% equity-dividend rate. His band of investment analysis produced a 6.96% capitalization rate. For tax year 2011, the expert utilized a 5.00% mortgage interest rate while all other figures remained constant. The resulting band of investment capitalization rate is 6.71%.

Defendant's expert concluded that the capitalization rate is 6.96% in 2009, 6.96% in 2010, and 6.71% in 2011.

The Court's Analysis

The court does not accept Plaintiff's capitalization rate. It first characterizes the property as RERC tier 2, even though the property was approximately three years old on the first valuation date. Moreover, the court does not accept the expert's opinion that the property is in a good to average location when, in his report, he determined an upward adjustments to his comparable leases were warranted due to the subject's prime location.

The court finds that the better reasoned analysis was submitted by Defendant. The ACLI tables are an accepted means of determining the capitalization rate. *See* *Glen Wall Assocs., supra,* 99 *N.J.* at 279–80, 491 *A.*2d 1247. The court finds that the rates submitted by Defendant are better supported, and will apply the 6.96% rate to tax years 2009 and 2010 and 6.71% for tax year 2011.

v. *Determination of True Value Using the Income Capitalization Approach*

Based on the above analysis, the court finds that the true value of the subject, as of the valuation dates, is as follows:

***404**

	As of 10/1/2008	As of 10/1/2009	As of 10/1/2010
Rent (per sq. ft.)	$50	$50	$50
x Square Footage	4100	4100	4100
Potential Gross Income	**$205,000**	**$205,000**	**$205,000**
Less Vacancy (6%)	$12,300	$12,300	$12,300
Effective Gross Income	**$192,700**	**$192,700**	**$192,700**
Less Management Fee (4%)	$7,708	$7,708	$7,708
Less Brokerage Fee (4%)	$7,700	$7,708	$7,708
Less Reserves Fee (1%)	$1,927	$1,927	$1,927
Less Miscellaneous Fee (1%)	$1,927	$1,927	$1,927
Net Operating Income	**$173,430**	**$173,430**	**$173,430**
Capitalization Rate	6.96%	6.96%	6.71%
True Value (Rounded)	**$2,492,000**	**$2,492,000**	**$2,585,000**

IV. *Cost Approach*

[43] The cost approach is more often used when the property is new or suffers only minor depreciation, where there is a lack of market activity, preventing use of another valuation method, or where there is proposed construction, special purpose, or other properties not frequently exchanged on the market. *Appraisal of Real Estate, supra,* at 382. "The cost approach is particularly important when a lack of market activity limits the usefulness of the sales comparison approach and when the property to be appraised—e.g., single-family residences—is not amenable to valuation by the income capitalization approach." *Ibid.*

When determining the highest and best use of the property as vacant, Defendant's expert stated that the lot could accommodate a variety of uses. As the lot is zoned commercially, he concluded that the highest and best use of the site as if vacant is for its development with a commercial use in accordance with zoning. The court agrees with this determination.

Defendant's expert provided the court with what he determined to be six comparable land sales to establish the value of the land as vacant. The court will not describe or analyze the comparability of those sales because the court cannot accept Defendant's replacement methodology for the reasons stated below.

***405** i. *Replacement Costs*

[44] Defendant's expert calculated the cost of replacing [22] the improvements on the subject property. First, he independently calculated it by relying upon the "Marshall & Swift Valuation Service." In so doing, he classified the building on the subject property as a "Class C" "Good to Excellent" building.

Included in the report's addendum are seventeen pages with data from the "Marshall & Swift Calculator Method." The

calculator method involves looking at the various tables to determine the class which best describes the building, manually calculating the cost of the improvements and multiplying the cost by current cost multipliers and then by local multipliers.

At trial it was revealed that the expert did not use the calculator method and did not rely upon the tables contained in his expert report. Instead, he relied upon a computer program[23] created by the "Marshall & Swift Valuation Service." He was then asked if the same numbers were used in both the computer program and the calculator method, if the two methods would produce the same result. The expert replied that, "They should come out very similar (sic)."

As a result of this revelation, the court cannot give Defendant's reproduction cost analysis any weight. The expert came to a conclusion of value based on a process not included in his report. There is no documentation for the method that was actually used, and because the expert did not specifically state which numbers he used from the many tables in his addenda, or how those numbers were used to calculate value, there is no means of verification. Though Defendant points out that the numbers contained in the ***406** addenda are "correct and accurate," the court has no way of knowing that those numbers were, in fact, entered into the computer program, especially given that the computer program produced a different value from the value which would result from the use of the addenda in the calculator method. While the court accepts as true Defendant's assertion that the computer program is commonly used by appraisers, the court cannot assess the program's accuracy or use it to determine true value in this case. Moreover, the differences that result from the computer program and a mathematical calculation based on the tables included in the report's addenda went unexplained. While the differences might be small, the court has no way of knowing how it will ultimately affect true value or Defendant's reconciliation of its two valuation approaches. Nor can the court determine how the difference would affect the expert's reconciliation between his cost approach and his **income** approach.

ii. *Conclusion of True Value Using the Cost Approach*

For the above stated reasons, the court does not have sufficient credible evidence with which to determine the value of the subject using the cost approach.

V. *Conclusion*

Having found the fair market value, the court must now determine the correct assessment through the application of the chapter 123 ratio to the fair market value. See *N.J.S.A.* 54:1–35a. "Chapter 123 must be noticed by the Tax Court judge." *Weyerhaeuser Co. v. Closter Bor.,* 190 *N.J.Super.* 528, 543, 464 *A.*2d 1156 (App.Div.1983); *Passaic Street Realty Assoc. v. Garfield,* 13 *N.J.Tax* 482, 487 (Tax 1994); *see also* *1530 Owners Corp. v. Borough of Fort Lee,* 135 *N.J.* 394, 397, 640 *A.*2d 811 (1994) (setting forth "a basic understanding of the methodology for formulating the chapter 123 ratio....").

The formula for determining the subject property's ratio is:

Assessment ÷ True Value = Ratio

Here, that equation is represented as follows:
***407**

Tax Year 2009	$3,586,500	÷	$2,492,000	= 1.439
Tax Year 2010	$3,586,500	÷	$2,492,000	= 1.439
Tax Year 2011	$3,586,500	÷	$2,585,000	= 1.387

The chapter 123 average ratio for the City of Hackensack for tax year 2009 was .9429 with an upper limit of 1.0833 and a lower limit of .8070. The chapter 123 average ratio for the city of Hackensack for tax year 2010 was .9916 with an upper limit of 1.1403 and a lower limit of .8429. There was a revaluation for tax year 2011, for which there is no chapter 123 ratio.

[45] Pursuant to *N.J.S.A.* 54:51A–6b, if the average ratio for the municipality is below the county percentage level (100%) and the ratio of the assessed value of the subject property to its true value exceeds the county percentage level (100%), as is the case here, the tax court shall enter judgment revising the taxable value of the property by applying the average ratio to the true value of the property. Consequently, the court will determine the assessment for the subject as follows:

Tax Year 2009	$2,492,000	x .9429	= $2,349,707
Tax Year 2010	$2,492,000	x .9916	= $2,471,067

Because 2011 was a revaluation year, the assessment for that year will be reduced to the true value of $2,585,000.

A Judgment establishing the both assessments for the subject property for tax years 2009 will be entered by the Tax Court Clerk as follows:

***408**

Block 204.01/Lot 16	
Land	$640,000
Improvement	$887,800
Total	$1,527,800

Block 204.01/Lot 26.01	
Land	$809,400
Improvement	$12,500
Total	$821,900

A Judgment establishing the assessment for the subject property for tax year 2010 will be entered by the Tax Court Clerk as follows:

Block 204.01/Lot 16	
Land	$673,000
Improvement	$933,700
Total	$1,606,700

Block 204.01/Lot 26.01	
Land	$851,200
Improvement	$13,200
Total	$864,400

A Judgment establishing the assessment for the subject property for tax year 2011 will be entered by the Tax Court Clerk as follows:

Block 204.01/Lot 16	
Land	$492,800
Improvement	$1,188,000
Total	$1,680,800

Block 204.01/Lot 26.01	
Land	$623,400
Improvement	$280,900
Total	$904,300

All Citations

28 N.J.Tax 363

Footnotes

1 During trial, Defendant's attorney was Donald J. Lenner, Esq. of the Law Offices of Donald J. Lenner.

2 The parties disagree on the frontages of the subject property. Plaintiff contends that the subject property has a frontage of 170 feet along River Street, 118 feet along East Atlantic Street, and 202 feet along Moore Street. Defendant submits the above referenced boundaries. The court finds that these differences do not affect the overall value of the property and uses Defendant's figures as they provided the frontage along the northerly boundary.

3 At that time there was an improvement on the property which was subsequently demolished to make way for the current improvement. At trial, Plaintiff's expert stated that Plaintiff acquired the property under two deeds totaling $3.8 million, but did not offer any deeds in support of that statement. The deed, dated July 26, 2004, submitted by Defendant concerns both lots and shows that the actual purchase price was $2.3 million.

4 Plaintiff instead contends that the lot is 38,577. The court finds that this difference does not affect the overall value of the property and will use Defendant's 38,322 square foot figure in the interest of consistency.

5 Plaintiff's expert contended that the building contains 4,050 square feet while the Defendant's expert contended the building contains 4,144 square feet. At trial the parties stipulated that the building on the subject property is 4,100 square feet large.

6 Facts or data include "(1) the expert's personal observations, or (2) evidence admitted at the trial, or (3) data relied upon by the expert which is not necessarily admissible in evidence but which is the type of data normally relied upon by experts." *Polzo, supra,* 196 *N.J.* at 583, 960 *A.*2d 375 (quoting *State v. Townsend,* 186 *N.J.* 473, 494, 897 *A.*2d 316 (2006)).

7 At trial, the expert stated that the adjustments were 5% and -5% per annum respectively. As the expert's report states that the adjustments were in the amounts stated above, those are the amounts which the court will use when describing Plaintiff's analysis. To support the adjustment, the expert performed a compared lease analysis which examined lease rents at inception and in subsequent years in addition to data reported by third parties and the expert's firm's observations in the course of business.

8 Comparable lease 1 is the exception.

9 The expert reports the lease date as April 1, 2008. Defendant's expert pointed out at trial that the date listed above is the correct date, as indicated on the cover page of the lease.

10 This adjustment was made based on the appraiser's erroneous belief that the property was constructed in 1999.

11 Plaintiff's expert relied upon the 4,050 square foot number when preparing his expert report as the parties did not stipulate to the 4,100 square foot number until the eve of trial.

12 Plaintiff and defendant did not stipulate that the building contains 4,100 square feet until after both experts had submitted their expert reports.

13 The analysis consists of two leases purporting to demonstrate market growth until mid–2007 and two leases purporting to demonstrate market decline after that time. The leases demonstrating the decline are also Plaintiff's comparable leases 4 and 6, discussed above.

14 Parenthetical contained in original citation.

15 Given Plaintiff's evidence surrounding the market decline, Plaintiff has failed to reconcile its conclusion as to true value with the purchase price of the land of $2.3 million only four years prior. Between 2004 and 2008, Defendant constructed a bank branch on the property, and the expert failed to demonstrate how the true value of the property declined by nearly half (by two-thirds using the expert's purchase price of $3.8 million) even with the construction of the improvement, in only four years.

16 The expert made an adjustment to lease 5 because it was newer construction, built in 2007. The court does not agree that a lease requires adjustment for age where the comparable is only two years older than the subject without supporting evidence. Even using Plaintiff's incorrect year of construction for the subject of 1999, the adjustment is unsupported. The court also notes that the expert made a downward adjustment for what he believed to be a difference of eight years, but did not make any corresponding adjustments for any of his comparables which were older than the subject, some by more than thirty years. The only explanation offered by the expert was a vague statement, not based on any facts in the record, that over time, tenants will make upgrades to the leased spaces; that functionally the properties are newer. The expert did not state that he observed the properties or obtain personal knowledge in some other manner that there were upgrades to any of his comparables. Nor did he rely on any market data or information about the specific comparables in coming to that conclusion. Without more, the expert's explanation cannot be given weight. The inconsistency contained in the expert's analysis is another reason the court finds Plaintiff's expert's analysis, on the whole, to be less credible.

17 The other, comparable lease 5, is not entitled to weight for the reasons stated above.

18 Though the expert did state that his time adjustments (or lack thereof) were based on sales from 2006 and 2007, the court is not convinced, for substantially the same reasons the court rejected Plaintiff's time adjustments.

19 Defendant's expert report lists the rent as increasing each year after year three of the ten year term. The average of the listed rents is $42.24 over the first five years of the ten-year term. The lease for this property was entered into evidence. It refers the reader to Schedule A for the rent schedule, but that page was not provided. Instead, the expert testified that he verified the terms of the lease with a party to the transaction. Plaintiff challenged the expert's calculation of face rent, which it argues should be $38.00 per square foot, by

directing the court's attention to Schedule B of the lease. That page indicates that the 2,825 square foot office is leased at $38.00 per square foot for a total of $107,350.00 (2825 × $38.00), on which Plaintiff bases its argument, but that page also includes the 500 square foot drive-through area is leased for $19.00 per square foot for a total of $9,500.00 (500 × $19.00). The expert apparently arrived at his per-square-foot value by adding those two amounts ($107,350.00 + $9,500.00 = $116,850.00) and dividing it by the square footage of the office, which produced the rental amount for the first three years of the term, $41.36. The average rent over the first five years was $42.24.

20 The expert stated that national strip centers are more “management intensive” than single freestanding bank branches like the subject. He did not provide any data to support that conclusion.

21 According to the expert, RERC Tier 2 properties are “investment properties defined as aging, former first-tier properties, in good to average locations.”

22 On direct examination, the expert stated he used replacements costs to determine the value of the improvement, as opposed to reproduction costs. On cross-examination, he stated in this case, replacement cost and reproduction cost would be the same because the improvement is new construction.

23 The expert stated, “I did not use—I did not hand calculate each cost item, [and] apply a multiplier. What I did was I relied upon the service that we subscribe to where you enter in all the information which it requests and then come up with a total replacement cost for the building.”

6 N.J.Tax 316
Tax Court of New Jersey

INWOOD AT GREAT NOTCH, Plaintiff,
v.
TOWNSHIP OF LITTLE FALLS, Defendant.

February 17, 1984.

Synopsis

SYNOPSIS

In a local property tax case involving apartment rental property, the Tax Court, Crabtree, J.T.C., held that: (1) plaintiff was barred by settlement stipulation from litigating 1981 assessment, and (2) taxpayer was bound to prevail on issue of replacement reserves, but in other respects the defendant's expert's approaches were more consistent with reality, under evidence in the case.

Judgment on accordance with opinion.

West Headnotes (16)

[1] **Taxation** Powers and Proceedings in Making Assessments in General

Enforcement of tax settlement agreement remains in sound discretion of the tax court, but under circumstances showing that settlement was fair and equitable to both parties, taxpayer was foreclosed from litigating 1981 assessment by reason of settlement stipulation by which taxpayer was legally bound. N.J.S.A. 54:3–21.

[2] **Taxation** Reassessment

Terms of settlement of local property tax case may properly include understanding that freeze act will apply to latest docketed year embraced in the settlement.

[3] **Pretrial Procedure** Limitation of issues in general

General rule that issues not preserved in pretrial order are deemed waived is subject to exception. R. 4:9–2; R. 4:25–1(b); R. 8:6–2.

[4] **Taxation** Presentation and reservation before board or officer of grounds of review

Under circumstances of the case including want of prejudice to taxpayer and taxpayer's counsel's full awareness of settlement and his not seeking continuance to meet township's evidence, taxpayer was bound by settlement for the year 1981 despite contention that, irrespective of settlement for 1981, issue could not be raised at trial because it was not preserved in pretrial order. R. 4:9–2; R. 4:25–1(b); R. 8:6–2.

[5] **Evidence** Value

Where neither expert in realty taxation case supported his land value estimate with credible evidence, tax court would ignore their respective calculations of land value and test probative utility of their capitalization assumptions by converting their calculations into effective capitalization rates, i.e., net income divided by true value, and comparing those rates with evidence submitted concerning market yields and investment alternatives during relevant period.

2 Cases that cite this headnote

[6] **Taxation** Capitalized income

Township's expert's use of cost approach, as applied to realty in question, as indicator of upper limit of value and as application of principle of substitution, i.e., no prudent investor would pay more for property than amount for which the site could be acquired and for which improvements could be constructed without undue delay, reflected sound appraisal principles.

[7] **Taxation** Capitalized income

Under evidence, income approach was the most probative indicator of value of realty which was subject of tax assessment dispute.

[8] **Taxation** Presumptions

Taxation Valuation

In tax assessment case, actual rates charged in well-managed large apartment complex with short-term leases constituted prima facie evidence of economic rent, and good management was presumed.

[9] **Taxation** Matters considered and methods of valuation in general

In tax assessment case, provision for replacement reserves was in accord with sound appraisal principles as was taxpayer's expert's method of calculating those reserves.

1 Cases that cite this headnote

[10] **Taxation** Capitalized income

On evidence, management fee equal to three percent of gross income was appropriate in determining propriety of tax assessment for apartment rental property for which income approach was appropriate.

[11] **Taxation** Capitalized income

Under evidence, effective rate of 12.7 percent used by township's expert was more reflective of market place reality than effective capitalization rate of 17.18 percent used by taxpayer's expert, in view, inter alia, of tax benefits in form of current depreciation allowances and favorable capital gains treatment.

[12] **Evidence** Evidence Withheld or Falsified

Taxpayer's failure to produce record from which degree of tenant turnover could have been found warranted inference that the records were unfavorable to taxpayer's position, and the prerogative to draw such inference was not limited to jury but, rather, trier of fact in nonjury case could also draw such inference.

2 Cases that cite this headnote

[13] **Taxation** Reassessment

Strong public interest in assessment stability and its corollary, stable, predictable municipal revenues, require that tax assessments not be hostage to sharp fluctuations traceable to volatile swings in the financial markets.

7 Cases that cite this headnote

[14] **Taxation** Time and date of assessment

Postassessing date events are not probative of true value of taxed property unless they corroborate facts in existence on assessing date or unless such events are reasonably foreseeable on assessing date.

8 Cases that cite this headnote

[15] **Taxation** Pleading

Taxpayer's entitlement to discrimination relief pursuant to statute is issue in every case, and litigants are not required to plead it. N.J.S.A. 54:2–40.4 (Repealed).

[16] **Taxation** Determination of rate of taxation

Whether or not tax discrimination was an issue, only effective substitute for actual tax expense was effective tax rate, to be determined, in case at bar, by a multiplying actual rate by statutory average ratio. N.J.S.A. 54:2–40.4 (Repealed).

Attorneys and Law Firms

***319** *Lawrence S. Berger* for plaintiff.

James V. Segreto for defendant (*Segreto & Segreto,* attorneys).

Opinion

CRABTREE, J.T.C.

This is a local property tax case wherein plaintiff seeks direct review, pursuant to *N.J.S.A.* 54:3–21, of the 1981 and 1982 assessments on its property located at 181 Long Hill Road, Little Falls, New Jersey (Block 237, Lots 38A, 40, 40A, 41, 42, 42A and 43A). The assessments for both years aggregated $4,681,600, allocated as follows:

Land	$ 326,700
Improvements	4,354,900

Total	$4,681,600 [1]

***320** At issue are the binding effect of a purported settlement of the case for 1981, true value and whether plaintiff is entitled to statutory relief from a discriminatory assessment pursuant to chapter 123, *L.*1973.

The subject of the controversy is 20.43 acres of land improved with a garden apartment and townhouse complex of 300-dwelling units. The physical setting is a promontory of breathtaking beauty, with mountain vistas to the northwest and the Manhattan skyline distantly limned in the southeast. The topography varies from gently rolling to sharp gradient changes, with some natural rock outcroppings augmenting the ambient charm.

The buildings, predominantly constructed between 1972 and 1974, are of brick over aluminum siding, with a rustic overlay on some structures of cedar shake. The interface of the buildings with the topography is an architectural masterpiece. [2]

The units are grouped into 11 buildings composed of the following types of apartments:

22 studios

22 studios with recreation room

66 one bedroom

66 one bedroom with recreation room

124 townhouses

All units have forced-air heat and air conditioning. The furnace in each building is gas-fired with power supplied by the landlord, which also furnishes each unit with a four-burner range-oven, refrigerator-freezer, exhaust fan and blinds. Dishwashers are also furnished in all units except the studios. The property is serviced by all public utilities including municipal ***321** water and sewer. Amenities include on-site paved parking, two swimming pools, outdoor tennis and basketball courts and children's play areas. The area is well landscaped with lawns, shrubs and trees. There are no signs of deferred maintenance.

At all times pertinent hereto a rent-levelling ordinance was in effect in the defendant municipality. Until about May 3, 1982 that ordinance limited annual rent increases to 40% of the increase in the consumer price index (CPI) from the date of execution of a lease to the date of the lease's expiration. On or about May 3, 1982 the ordinance was amended to permit rent increases equal to 50% of the CPI change and to provide for vacancy decontrol, *i.e.,* the landlord was allowed to charge a new tenant market rent. Under the ordinance a landlord could recover a local property tax surcharge from his tenants if taxes were increased from one year to the next and if, in the year of such increase, the total tax exceeded 20% of the landlord's gross rental income. The ordinance also provided for hardship rent increases whenever the municipal rent-levelling board found that the landlord's rate of return on invested capital fell below a just and reasonable rate.

The aforementioned amendment dealing with vacancy decontrol was the subject of heated public debate in the defendant municipality beginning around May 1981, when the proposed adoption of vacancy decontrol was advertised in local newspapers. Several hearings were conducted before the municipal governing body between May and October 1981, when the governing body voted to adopt vacancy decontrol and to change the measure of automatic rent increases from

40% to 50% of the CPI. These hearings were attended by large numbers of tenants and representatives of tenant organizations, all in opposition to vacancy decontrol.

Plaintiff filed tax appeals for the years 1977 and 1978 concerning the subject property with the Division of Tax Appeals and for 1979 and 1980 with this court. Those appeals were settled by written stipulation dated January 23, 1981. That document, *inter alia,* fixed the 1980 assessments at $4,681,600 and provided that the freeze act would apply for 1981. The stipulation, signed by counsel for both parties, was transmitted ***322** to the Tax Court Clerk's office by letter dated January 27, 1981 from plaintiff's attorney, who referred therein to a "fully executed Stipulation of Settlement for years 1977–1981." Judgment was entered in the Tax Court on April 16, 1981 reflecting the agreement of the parties concerning the assessments for 1977 through 1980. The judgment included no reference to that provision of the stipulation dealing with the freeze act for 1981.

A pretrial order in this case made no reference to the settlement, nor to the disposition of 1981 on the basis of the freeze act. The case for 1981 was tried to a conclusion before me on February 2 and 3, 1983. The issue of a settlement of the year 1981 on the basis of the freeze act incident to a settlement of docketed cases for prior years did not arise until defendant's presentation of its case in chief, during the course of which counsel proffered in evidence a series of documents tending to show such a settlement. Plaintiff objected to their introduction on the ground that the issue was not preserved in the pretrial order. The court deferred ruling on plaintiff's objection and permitted the issue to be addressed on brief.

[1] **[2]** I conclude that plaintiff is foreclosed from litigating the 1981 assessment by reason of the settlement stipulation by which plaintiff is legally bound. The long standing policy of our courts favors settlement of litigation. *Judson v. Peoples Bank & Trust Co.,* 25 *N.J.* 17, 134 *A.*2d 761 (1957); *Honeywell v. Bubb,* 130 *N.J.Super.* 130, 325 *A.*2d 832 (App.Div.1974). To be sure, the enforcement of settlement agreements remains in the sound discretion of the court. *Jannarone v. W.T. Co.,* 65 *N.J.Super.* 472, 168 *A.*2d 72 (App.Div.), certif. den. 35 *N.J.* 61 (1961); *see Jackson Tp. v. Marsyll of B.B. Inc.,* 3 *N.J.Tax* 386, 391–392 (Tax Ct.1981); *cf. R.* 8:9–5 (local property tax judgments may be entered pursuant to settlement supported by such proof as the court may require). Nothing in this record, however, warrants a conclusion that the settlement was anything but fair and equitable to both parties. Certainly, the terms of settlement of a local property tax case may properly include an understanding that the freeze act will apply to the latest docketed year embraced in the settlement. *South Plainfield v. Kentile Floors, Inc.,* 92 *N.J.* 483, 457 *A.*2d 450 (1983). ***323** It is clear to the court that settlement of the earlier years and the agreement to apply the freeze act for 1981 were the product of intense, protracted negotiation between competent, knowledgeable counsel fully aware of the strengths and weaknesses of their respective litigating positions. The settlement so meticulously forged by their protean efforts was unambiguous, devoid of loose ends and complete on its face. No claim is made that defendant failed to honor the settlement or any part thereof. Indeed, plaintiff, in its reply brief, acknowledges defendant's compliance in fixing the 1981 assessment at the same level as the assessment agreed upon for 1980.

[3] Plaintiff argues, however, that irrespective of a settlement for 1981, the issue could not be raised at trial as it was not preserved in the pretrial order. It is, of course, axiomatic that a trial must be held within the framework of the pretrial order and the parties are limited to the issues therein raised. *Rothman Realty Corp., v. Bereck,* 73 *N.J.* 590, 376 *A.*2d 902 (1977); *Lertch v. McLean,* 18 *N.J.* 68, 112 *A.*2d 735 (1955). Issues not preserved in the pretrial order are deemed waived. *Muntz v. Newark City Hospital,* 115 *N.J.Super.* 273, 279 *A.*2d 135 (App.Div.1971). As with so many rules of broad application, however, there are exceptions. *R.* 4:25–1(b), incorporated in Tax Court practice by *R.* 8:6–2, provides in pertinent part:

> When entered, the pretrial order becomes part of the record, supersedes the pleadings where inconsistent therewith, and controls the subsequent course of action *unless modified at or before the trial or pursuant to R. 4:9–2 to prevent manifest injustice....* [Emphasis supplied]

R. 4:9–2 provides, pertinently:

> ... If evidence is objected to at the trial on the ground that it is not within the issues made by the

> pleadings and pretrial order, the court may allow the pleadings and pretrial order to be amended *and shall do so freely when the presentation of the merits of the action will be thereby subserved and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits*. The court may grant a continuance to enable the objecting party to meet such evidence. [Emphasis supplied]

[4] The circumstances of this case warrant relaxation of the rule confining a trial to the issues raised in the pretrial order. The modifications and amendments contemplated by the cited ***324** rules of court are appropriate and the pretrial order is deemed amended. Plaintiff was not prejudiced by the introduction in evidence of proofs pertaining to the settlement. Plaintiff's counsel was fully aware of the settlement as he was an active participant in the negotiations preceding it. He could thus not claim to be surprised by those proofs, nor did he so claim. He did not seek a continuance to meet defendant's evidence in this regard. Indeed, there was no contrary evidence, plaintiff having acknowledged that provision was made in the settlement for 1981.

In view of the foregoing I conclude that plaintiff is foreclosed from any further reduction in the 1981 assessment.

[5] With respect to 1982 the valuation estimates of the parties' experts and the analytical tools which they employed are as follows:

	Plaintiff	Defendant
	---	---
True value	$6,956,700	$11,000,000
Approaches to value	Income	Income, cost
Approach principally relied upon	Income	Income
Economic rent	$1,746,373	$1,780,000
Vacancy allowance	-0-	-0-
Expenses	$551,446	$469,100
Effective net income	$1,194,927	$1,310,900
Capitalization rate [3]	17.5% [4]	12.93% [5]
Effective capitalization rate [6]	17.18%	11.91%

***325** **[6]** As indicated in this columnar presentation, defendant's expert utilized the cost approach as well as the income approach. His estimate of replacement cost under the former method was $16,000,000 before depreciation. He estimated the cost of land at $4,000 a unit or $1,200,000. He viewed the cost approach, as applied to the subject property, as an indicator of the upper limit of value and as an application of the principle of substitution, *i.e.,* no prudent investor will pay more for a property than the amount for which the site can be acquired and for which improvements can be constructed without undue delay. The expert's use of the cost approach in this context reflects sound appraisal principles. *American Institute of Real Estate Appraisers, The Appraisal of Real Estate* (8 ed. 1983) 442. Moreover, his cost figures are derived from a reliable source, namely, the *Real Property Appraisal Manual for New Jersey Assessors.* Even if his unsupported estimate of land value were substantially reduced, the resultant overall figure would still represent the

upper limit of value and a valid application of the principle of substitution.

[7] In any event, defendant's expert placed principal reliance upon the income approach, which I find to be the most probative indicator of the value of the subject property. It is well settled that the income approach is of preponderant influence in the valuation of apartment properties. *Helmsley v. Fort Lee,* 78 *N.J.* 200, 394 *A.*2d 65 (1978), app. dism. 440 *U.S.* 978, 99 *S.Ct.* 1782, 60 *L.Ed.*2d 237 (1979); *Fort Lee v. Hudson Terrace Apts.,* 175 *N.J.Super.* 221, 417 *A.*2d 1124 (App.Div.1980); *G & S Co. v. Eatontown,* 2 *N.J.Tax* 94 (Tax Ct.1980).

[8] Plaintiff's gross income estimate is based upon an average of actual gross income of $1,683,954 for calendar-year 1980 and $1,808,791 for calendar-year 1981. Gross income for both ***326** those years consisted of apartment and garage rentals, security forfeitures, late fees, laundry commissions and pool fees and miscellaneous. Defendant's gross income was also derived from an analysis of what the expert was led to believe was actual gross income for 1980 and 1981, except that defendant's expert did not average the two-years' income; rather, he utilized the actual income for 1981 as the economic rent. I find defendant's approach to be more in accord with reality. Whatever the putative investor's view of expenses, he will certainly project future gross income (as distinguished from net income) to be no lower than that reflected in the latest income statement. Neither expert posited a vacancy or collection loss allowance and the municipality's rent-levelling ordinance did permit automatic rent increases, no matter how stringent that ordinance may appear. The figures used by defendant's expert for actual gross income, however, were incorrect. The correct gross income for 1981 was $1,808,791, as reflected in the appraisal report of plaintiff's expert. I find that figure to be the economic rent for the subject property on the assessing date. Actual rents charged in a well-managed large apartment complex with short-term leases constitute prima facie evidence of economic rent. *Parkview Village Ass'n v. Collingswood,* 62 *N.J.* 21, 297 *A.*2d 842 (1972). Good management is presumed. *G & S Co. v. Eatontown, supra.*

The experts also differ in their expense estimates by some $82,000, virtually all of which is attributable to four items. Plaintiff posits a reserve for replacements of $34,927 (2% of gross income), while defendant makes no such provision; the experts are $4,000 apart on payroll expense; plaintiff assumes repairs and maintenance at 5% of gross income ($87,319) while defendant postulates $39,900, the average of actual expenses for the years 1979, 1980, and 1981; and plaintiff estimates the management fee to be 5% of gross income, while defendant claims that such charge should not exceed 3%.

[9] Plaintiff must prevail on the issue of replacement reserves. Its expert estimated the replacement cost for each item ***327** of equipment supplied by the landlord, namely, refrigerator-freezer, air conditioner, range, blinds and dishwasher, then multiplied the total cost of those items by the number of dwelling units (making suitable adjustment for the absence of dishwashers in the studios) and divided the total by the number of years of estimated useful lives of the items. The quotient was an amount substantially in excess of his postulated replacement reserve of $34,927. Provision for replacement reserves is in accord with sound appraisal principles, as is the expert's method of calculating those reserves. *The Appraisal of Real Estate, supra* at 362, 368–369; *see* Gerrodette, "Appraisal of Apartment Properties," *Encyclopedia of Real Estate Appraising,* (3 ed. 1978) 245, 267–268.

Plaintiff's expert posits $68,000 for the salaries of a superintendent, an assistant superintendent and maintenance personnel. His assumption is consistent with the average salaries for those categories for 1980 and 1981. Defendant's expert posited salaries for the same positions at $64,000, the average of the years 1979, 1980 and 1981. The salaries for 1979, however, were substantially lower than the salaries for 1980 and 1981. In this era of relentlessly escalating expenses, the prudent investor would disregard the earlier of the three years in predicting the future levels of supervisory and maintenance salaries. Thus, the salary levels posited by plaintiff's expert are more in accord with reality; and I will use his estimate of $68,000 in determining expenses.

The assumption made by plaintiff's expert fixing repair and maintenance expenses at 5% of gross income is not supported by credible evidence. The actual expenses in that category averaged approximately $59,000 for 1980 and 1981. Defendant's expert, relying primarily upon a three-year average (1979, 1980 and 1981), posits repair and maintenance expenses at $39,900. As with salaries, the repair and maintenance expenses were substantially lower in 1979 than they were in 1980 and ***328** 1981. Again, the prudent investor would disregard the earlier years in estimating future

expense levels. I therefore find that $59,000 represents a reasonable amount for repair and maintenance expenses.

[10] The final area of expense in which the experts differ is the management fee. Plaintiff's expert postulates 5% of gross income, while defendant's expert concludes that 3% is a reasonable allowance. Defendant must prevail on this issue. Management includes such activities as on-site supervision, accounting and clerical assistance. *The Appraisal of Real Estate, supra* at 365. Much of the on-site supervision of the subject property is provided by the resident superintendent and assistant superintendent and their salaries are already reflected in operating expenses. Management's responsibility for engaging independent tradesmen to perform maintenance and repair work is reduced by the on-site, full-time employment of maintenance personnel, provision for whose salaries is also made in operating expenses. Management's duties with respect to vacancies and collection of delinquent rents are at a minimum, both experts having postulated that there will be no vacancies or collection losses in the foreseeable future. Finally, the historic experience of the property reflects management expenses of 3.7% of gross income for 1977, 1978 and 1979.

Accordingly, I find a management fee equal to 3% of gross income to be appropriate.

[11] We are left with the most significant aspect of this case, namely, the selection of an appropriate capitalization rate and the effect thereon of the municipality's rent-levelling ordinance and the ordinance providing for vacancy decontrol. An important subsidiary point is the selection of the appropriate tax rate as a component of the overall capitalization rate.

Plaintiff contends that the appropriate capitalization rate is that used by its expert, namely, the effective rate of 17.18%. ***329** This rate, plaintiff continues, reflects the putative investor's concern over rent control and the adverse effect thereof on the quality of the net income stream. Plaintiff points specifically to the restrictive nature of a property tax surcharge, [7] the absence of all other expense surcharges and the limitation of automatic rent increases to a fraction of the change in the consumer price index. Finally, plaintiff relies upon the testimony of a mortgage broker, called as an expert on real estate acquisition financing, for the proposition that, during the period under review, the marketplace showed little interest in rent-controlled properties.

As for vacancy decontrol, plaintiff argues that, inasmuch as the ordinance pertaining thereto was not enacted until May 1982 the court may not consider it, as the evidence is insufficient to show that the adoption of vacancy decontrol was foreseeable on the assessing date (October 1, 1981). Plaintiff urges in the alternative that vacancy decontrol has no effect on the subject property as the tenant turnover therein is minimal.

Defendant argues, on the other hand, that the effective rate of 12.7% used by its expert is more reflective of marketplace reality, that the benefits of ownership outweigh any disadvantage attributable to rent control. Defendant points to the physical amenities, the prospect of appreciation over time and the income tax benefits associated with the ownership of income producing real property. Defendant also argues that the prospect of conversion to cooperative or condominium ownership enhanced the property's value in the eyes of the suppositious investor. Defendant's expert, however, acknowledged the adverse effect of rent control on an investor's perception of the quality of the investment but he felt this was neutralized by vacancy decontrol. He opined, further, that without the prospect of vacancy decontrol on the assessing date he would have increased his capitalization rate by ½% to 1%.

***330** The determination of an appropriate rate by means of which net income is capitalized to ascertain true value for tax purposes requires consideration of a host of factors, many of them interdependent and of varying weight. Notwithstanding the need for such evaluation—and the plethora of more or less objectively ascertainable factors—the determination inescapably calls for the exercise of subjective judgment. *See* 1 *Bonbright, Valuation of Property* 266 (1937). After weighing and considering the testimony of the experts and the evidence offered in their support I conclude that the weight of the evidence favors defendant.

To begin with, the subject property, like all large apartment properties with little or no vacancies, enjoys benefits of ownership found in no other type of investment. Those benefits include leveraged investment, tax benefits [8] in the form of current depreciation allowances (which, at an early date following the buyer's acquisition may be expected to exceed his cash investment in the property) and favorable capital gains treatment upon sale and the prospect of appreciation in value. Moreover, the substantially higher cost of constructing an equivalent complex (even allowing for defendant's tenuous land value), under the principle of

substitution, enhances the subject's value in the eyes of the prospective purchaser and strengthens the bargaining position of the seller. To be sure, rents in the subject property are controlled by a municipal agency whereas under the defendant's rent-levelling ordinance the owner of a newly constructed apartment complex may initially charge market rents. This apparent advantage, however, is reduced, if not entirely offset, by expenses incurred during construction, including the opportunity cost of invested capital attributable to the construction period before the property can produce income.

***331** **[12]** Furthermore, the imminent prospect of vacancy decontrol, which I find from the evidence to be reasonably foreseeable on the assessing date, will temper whatever effect the defendant's rent-levelling ordinance might have on the investor's determination of the price he should pay for the property. Plaintiff's expert contends in this connection that vacancy decontrol has no effect on the income of the subject property, as the tenant population is composed predominantly of older citizens who tend to remain and thus, tenant turnover is minimal. The court is unable to draw a definitive conclusion in this regard from the visual inspection of the property. In any event, the age of the tenant population is not what matters. The fact to be proved is the degree of tenant turnover, not the demographic characteristics of the tenant population, for turnover is the key to the benefits of vacancy decontrol for the landlord. The facts in this regard could have been conclusively established by records in the possession of plaintiff's management. The failure to produce those records, under the circumstances, warrants the inference that they are unfavorable to plaintiff's position. *Wild v. Roman,* 91 *N.J.Super.* 410, 220 *A.*2d 711 (App.Div.1966); *Hickman v. Pace,* 82 *N.J.Super.* 483, 198 *A.*2d 123 (App.Div.1964). The prerogative to draw such an inference is not limited to a jury; the trier of fact in a non-jury case may also do so. *Robinson v. Equitable Life Assur. Soc. of United States,* 126 *N.J.Eq.* 242, 8*A.*2d 600 (E. & A. 1939); *Series Publishers v. Greene,* 9 *N.J.Super.* 166, 75*A.*2d 549 (App.Div.1950). Accordingly, I draw the inference that plaintiff's records will disclose tenant turnover and conclude therefrom that vacancy decontrol substantially mitigates whatever adverse impact defendant's rent-levelling ordinance might otherwise produce on the property's net income.

[13] Plaintiff, through its valuation expert as well as the mortgage broker who testified about the general state of mortgage markets, places heavy reliance upon the precise state of affairs obtaining at or about the assessing date, alluding to the high prime rate, high inflation, the fact that both purchasers and lenders were shunning fixed returns of any sort, and ***332** the unavailability of the leverage required by tax motivated investors. Indeed, the valuation expert's appraisal report shows that no mortgage loans of $100,000 or more were made during the second, third and fourth quarters of 1981 by the 20 life insurance companies surveyed by the American Council of Life Insurance. Plaintiff offered no evidence of conditions in the financial markets prior to the fourth quarter of 1979. Rates of return and interest rates shown in plaintiff's appraisal report for 1979 and 1980 do not support the conclusion of plaintiff's expert relative to the capitalization rate. Plaintiff's narrow focus on a constricted time frame proximate to the assessing date is unsound. The strong public interest in assessment stability and its corollary, stable, predictable municipal revenues, require that tax assessments not be hostage to sharp fluctuations traceable to volatile swings in the financial markets. *New Brunswick v. Tax Appeals Div., supra;* *Murnick v. Asbury Park,* 2 *N.J.Tax* 168 (Tax Ct.1981), rev'd on other grounds 187 *N.J.Super.* 455, 455 *A.*2d 504 (App.Div.1982). As our Supreme Court said in the *New Brunswick* case:

> The taxpayer's expert found [the rate of return] to be 6% for the year 1958.... With respect to 1959, the witness increased the rate to 6 ½ because mortgage money was more costly on the assessing date for that year. We note in passing that the assessment process cannot be so acutely sensitive to such changes. It is not feasible for an assessor to adjust the rolls to the fluctuations of the mortgage market. The rate of return should reflects conditions for a reasonable span of years. It must be remembered that valuation for taxation cannot be dollar precise. [39 *N.J.* at 550, 189 *A.*2d 702]

[14] In weighing and considering the evidence pertaining to the appropriate capitalization rate I have considered defendant's arguments relative to the prospect of conversion of the subject property to condominiums or cooperatives. The evidence does not indicate that, on or around the assessing

date, plaintiff was contemplating any such conversion, nor are there proofs from which one could conclude that conversion was reasonably foreseeable on or about such date. Defendant's proofs of transactions occurring in December 1982, some 15 months after the assessing date are not probative of any state of facts existing on the latter date. Post-assessing date events are not probative of true value unless they corroborate facts in ***333** existence on the assessing date or unless such events are reasonably foreseeable on the assessing date. *Fort Lee v. Invesco Holding Corp.,* 3 *N.J.Tax* 332 (Tax Ct.1981), aff'd 6 *N.J.Tax* 255 (App.Div.1983), certif. den. 94 *N.J.* 606, 468 *A.*2d 238 (1983).

The final question to be addressed is the choice of tax rate. Plaintiff argues that the actual tax rate of $4.79 should be used where discrimination is not in issue, but that the effective tax rate, calculated by multiplying the actual rate by the chapter 123 average ratio, must be used where discrimination relief is sought. The defendant's argument is direct and uncomplicated. If the taxpayer raises the issue of discrimination then the effective tax rate must be used. The problem can give rise to a "Catch-22" situation, and does so in this case. If the effective rate is used the ratio of assessment to value falls within the upper limit of the common level range (115% of the Director's average ratio) and plaintiff is not entitled to discrimination relief. If the actual rate is used the ratio of assessment to value falls beyond the common level range and plaintiff is entitled to discrimination relief.

[15] In *Fort Lee v. Hudson Terrace Apts., supra,* the Appellate Division declared that whenever discrimination is not proved the actual tax rate must be used. That decision offers no guidance in the instant case, where a low average ratio (41%) produces a large disparity between actual and effective tax rates and a correspondingly great difference in the true value calculations; so great, in fact, as to make the difference between discrimination relief and affirmance of the assessment. The *Hudson Terrace* opinion, however, must be read in the context of the state of the law as it then existed regarding discrimination, *i.e.,* the taxpayer was required to plead discrimination, which was viewed as a separate cause of action. *See Cleff Realty Co. v. Jersey City,* 41 *N.J.Super.* 465, 125 *A.*2d 423 (App.Div.1956), certif. den. 23 *N.J.* 58, 127 *A.*2d 227 (1957); *Anaconda Co. v. Perth Amboy,* 157 *N.J.Super.* 42, 384 *A.*2d 531 (App.Div.1978), certif. den. 81 *N.J.* 55, 404 *A.*2d 1155 (1979). ***334** The *Cleff* and *Anaconda* cases and their progeny antedated the enactment of chapter 123, the statutory basis for discrimination relief. It is now the law that entitlement to discrimination relief pursuant to chapter 123 is an issue in every case and litigants are not required to plead it. *Weyerhaeuser Co. v. Closter Boro.,* 190 *N.J.Super.* 528, 464 *A.*2d 1156 (App.Div.1983), certif. den. —— *N.J.* ——, ——*A.*2d —— (1983).

In the famous *New Brunswick* case our Supreme Court concluded that the tax expense was best represented by application of the common level of assessments, expressed as a percentage, to the actual tax rate. Significantly, the Court did not condition the use of such method upon a finding of discrimination. 39 *N.J.* at 546–547, 189 *A.*2d 702.

Until the enactment of chapter 123, courts in tax discrimination cases sought the common level of assessments, *i.e.* that percentage of true value at which the generality of properties in the taxing district was assessed. *See, e.g., In re Appeal of Kents, 2124 Atlantic Ave., Inc.,* 34 *N.J.* 21, 166 *A.*2d 763 (1961); *Piscataway Assoc. v. Piscataway,* 73 *N.J.* 546, 376 *A.*2d 527 (1977); *Continental Paper Co. v. Ridgefield Park,* 122 *N.J.Super.* 446, 300 *A.*2d 850 (App.Div.1973). Relief was granted where the taxpayer could show that his property was assessed substantially higher than the common level of assessments prevailing in the taxing district. *Piscataway Assoc. v. Piscataway, supra.* With the enactment of chapter 123, the taxpayer was no longer required to prove the common level or, for that matter, the absence of it. He merely had to prove the true value of his property and that the ratio of the assessment to such value was beyond the upper limit of the common level range, *i.e.,* 115% of the Director's average ratio. Having established that, he became automatically entitled to relief by application of the Director's ratio to the true value of his property.

[16] It will thus be seen that with the advent of chapter 123, the common level of assessment, which taxpayers had labored so strenuously to establish by means of sales-ratio clusters, coefficients of deviation and similar arcane statistical devices, ***335** was replaced by the Director's average ratio, a number readily available and known to all concerned. To put it in a slightly different way, the Director's average ratio, promulgated pursuant to chapter 123, became, by statute, the common level of assessment. Thus, whether or not discrimination is an issue—and it is bound to be an issue where the Director's average ratio is as low as it is in this case —the only effective substitute for actual tax expense is the effective tax rate, as our Supreme Court told us 20 years ago.

That rate is determined in this case by multiplying the actual rate ($4.79) by the chapter 123 average ratio (41%).

In view of the foregoing I find the true value of the subject property on October 1, 1981 to be $10,349,340, determined under the income method as follows:

Gross income		$ 1,808,791
Less vacancy & loss allowance		-0-
Effective gross income		$ 1,808,791
Expenses:		
Insurance	$19,962	
Heat and cooking gas	152,706	
Electricity	23,625	
Water	18,490	
Superintendents' salaries	40,000	
Pool salaries	4,807	
Payroll - 3 handymen @ $4.50/hr.	28,080	
Payroll taxes & group insurance	10,579	
Painting & decorating	5,515	
Repairs & maintenance	59,000	
Supplies	4,795	
Reserve for replacement (2%)	36,175	
Landscaping & snow removal	16,607	
Trash removal	13,715	
Professional fees	3,000	
Management (3%)	54,264	
Total expenses		491,320
Effective net income		$ 1,317,471
Capitalized at 12.73%		
(including effective tax		

rate of 1.96)

True value	$10,349,340

***336** The provision of chapter 123 applicable to proceedings in this court, namely, *N.J.S.A.* 54:2–40.4, declares that a taxpayer is entitled to discrimination relief if the ratio of the assessment to the property's true value, as found by this court, exceeds the upper limit of the common level range, defined in *N.J.S.A.* 54:1–35a as 115% of the average ratio promulgated by the Director of the Division of Taxation pursuant to *N.J.S.A.* 54:1–35.1. The average ratio so promulgated for the defendant taxing district for 1982 is 41% and the upper limit of the common level range is 48%. The ratio of the 1982 assessment of the subject property to its true value as hereinabove found is 45%. Plaintiff is thus not entitled to discrimination relief for 1982.

Judgment will be entered determining the assessment for both 1981 and 1982 to be as follows:

Land	$ 326,700
Improvements	4,354,900
Total	$4,681,600

All Citations

6 N.J.Tax 316

Footnotes

1 Neither party advised the court of the breakdown of the total assessments among the enumerated lots. The parties appeared to view the assessments as a unitary aggregate and the court will do likewise.

2 All visual impressions recorded in this opinion result from an on-site inspection by the court, in the company of counsel, in the twilight hours of Monday, October 3, 1983.

3 Both experts used the building residual method. Plaintiff derived the land value by equalizing the land assessment of $326,700 by the chapter 123 ratio promulgated by the Director, Division of Taxation for 1982 (41%), thereby arriving at a land value estimate of $750,000. Defendant simply posited a land value of $4,000/unit or $1,200,000.

4 12.5% interest, 3.0% recapture, 2.0% effective tax rate.

5 9.0% interest, 2.0% recapture, 1.93% effective tax rate.

6 As neither expert supported his land value estimate with credible evidence, I will ignore their respective calculations of land value and test the probative utility of their capitalization assumptions by converting their calculations into effective capitalization rates (*i.e.,* net income divided by true value) and comparing those rates with the evidence submitted concerning market yields and investment alternatives during the relevant period.

7 Property taxes may be passed on to tenants only when such taxes exceed 20% of gross rental income. Neither party contends that this ever happened.

8 Our Supreme Court, as long ago as 1963, acknowledged the role of income tax benefits in tax valuation proceedings. *See* *New Brunswick v. Tax Appeals Div.,* 39 *N.J.* 537, 551, 189 *A.*2d 702 (1963).

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practices involve the use of two types of capital—debt and equity—and a typical venture is structured with a substantial mortgage amount and a smaller equity contribution. The most common capital market instruments are stocks, bonds, mortgages (including junior liens and home equity loans), and deeds of trust and contracts for deeds. Although stocks are capital market items, they are equity investments with no fixed maturities.

Mortgages

A mortgage is a legal instrument for pledging a described property interest as collateral or security for the repayment of a loan under certain terms and conditions. A mortgage operates in conjunction with a promissory note, which specifies the interest rate

Signs of a Changing Market

A real estate bubble may be evidenced by

- The rates of return associated with a property type and the economic characteristics of tenants or users are not typical and tend to be very low. For example, capitalization rates may be very low or indicate negative leverage, which is often a sign of speculation.
- Prices increase at a faster rate than rents.
- Rates of return decrease below long-term trends.
- Prices rise while rents and net incomes remain stable or are declining.
- Traditional buyers are replaced by new ones. "Everyone" starts to invest in real estate.
- The number of transactions increases.
- Marketing times are shorter.
- Average days-on-market decreases.
- There are very few expired listings.
- The number of properties remaining vacant after purchase increases.
- Condominium conversions become more common.
- The number of persons employed in the real estate sector (real estate sales, mortgage lending) increases significantly.
- Rents increase faster than the ability of tenants to pay.
- Sale prices are beyond the affordability of users.

A bust market may be evidenced by

- Sales are few, at least initially, because sellers are reluctant to sell and realize losses.
- The rate of foreclosures increases.
- Seller concessions increase, both in terms of frequency and magnitude.
- Credit markets tighten. Traditional financing becomes more difficult to obtain.
- The use of "creative" financing, generally seller financing, increases. These arrangements serve to keep nominal prices from falling, at least in the initial stages of a bust.
- Marketing times are longer.
- Average days-on-market increases.
- The number of expired listings increases.
- The number of persons employed in the real estate sector declines.
- Job growth is declining.
- Rents are not rising at the same rate as the last few years.
- Vacancy is increasing.

SPEAKER BIOGRAPHIES

Arthur Linfante, III, MAI, CRE

Experience

Art Linfante has actively been engaged in real estate valuation and consulting since 1986. He is currently the Managing Director and partner at Integra Realty Resources – Northern New Jersey. He is a State Certified General Real Estate Appraiser in New Jersey, New York and Pennsylvania and holds the MAI designation from the Appraisal Institute and the CRE designation from Counselors of Real Estate.

Mr. Linfante has extensive experience in asset valuation and advisory functions on a broad array of properties. Along with typical office, industrial, retail and apartment properties, he has been involved in evaluating complex properties such as site development and redevelopment, institutional/corporate grade facilities, special purpose property, full service hotels and casinos, marine terminals, nursing homes and schools, laboratory and research facilities, and petroleum and chemical storage facilities.

Recognized for his knowledge in litigation, municipal and corporate issues, Mr. Linfante is an experienced consultant to corporate clients as well as to several major municipalities in New Jersey. He has consulted on a variety of issues relating to real estate taxes, lease negotiations, fiscal impacts and redevelopment. As a trial consultant, Mr. Linfante has assisted many of the state's largest law firms with matters relating to partnership disputes, real estate taxes, equitable distribution and eminent domain issues. He is qualified as an expert witness before the Superior Court of New Jersey - Law Division; the Tax Court of the State of New Jersey; and various County Boards of Taxation. Mr. Linfante was appointed by the Supreme Court of New Jersey as a member of the Supreme Court Committee on the Tax Court and has served from 2000 to 2006.

More recently, Mr. Linfante's advisory services have focused on the expanding market of urban revitalization and redevelopment and he is presently involved in several redevelopment efforts. Current assignments include market studies, as well as marketability and feasibility studies on a broad range of property types. He has served on the Urban Revitalization Committee and the Public Policy Task Force of the National Association of Industrial and Office Properties (NAIOP).

Mr. Linfante holds the MAI designation from the Appraisal Institute and a CRE designation from the Counselors of Real Estate. He is a State Certified General Real Estate Appraiser (SCGREA) in the states of New York, New Jersey and Pennsylvania and is licensed by New Jersey as a Real Estate Salesperson. He is an active instructor for the Appraisal Institute and has developed seminars on property tax analysis and valuation issues for Lorman Educational Services, International Association of Assessing Officers, New Jersey Redevelopment Authority and has been a guest speaker for the Business MBA program at Rutgers University and the Wharton School of Business.

Licenses

New Jersey, SCGREA, 42RG00096500, Expires December 2021
New York, SCGREA, 46000039337, Expires June 2022
Pennsylvania, SCGREA, GA003491, Expires June 2023

Education

Undergraduate: Thomas Edison College, Trenton, NJ

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Arthur Linfante, III, MAI, CRE

Education (Cont'd)

Professional Education
- Attended Various Real Estate Investment and Professional Education Courses:
  - Rutgers University
  - Massachusetts Institute of Technology
  - The Appraisal Institute
  - International Association of Assessing Officers

Course Titles
- Real Estate Appraisal Principles
- Advanced Applications
- Basic Valuation Procedures
- Valuation Analysis and Report Writing
- Capitalization Theory, Part A
- Advanced Income Capitalization
- Capitalization Theory, Part B
- Environmental Cost Avoidance & Recovery
- Standards of Professional Practice
- Highest & Best Use/Market Analysis
- Understanding Real Estate Markets
- Fundamentals of Real Estate Finance
- Brownfield Redevelopment
- Fundamentals of Real Estate Development
- Separating Real and Personal Property from Intangible Business Assets
- MIT – Real Estate Development Seminars

Qualified Before Courts & Administrative Bodies

Condemnation Commissioners Hearings
Tax Court of the State of New Jersey
Superior Court of New Jersey – Morris, Essex and Hunterdon Counties
Superior Court of New Jersey – Hunterdon County
Superior Court of Florida – Palm Beach County
County Boards of Taxation in Bergen, Morris, Passaic, Sussex, Essex, Warren, Union and Middlesex

Miscellaneous

Seminars and Lectures
New Jersey Property Taxation – Lorman Seminars
Rutgers University – Adjunct Professor-Rutgers Business School
Guest Lecturer – Wharton School of Business
Appraisal Instructor – Appraisal Institute
- Course 110 – Appraisal Principals
- Course 120 – Appraisal Procedures
- General Appraiser Income – Part I
- General Appraiser Income – Part II
- Advanced Income Capitalization

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Connor Milanaik
Director, Acquisitions
BRIDGE INDUSTRIAL

Connor Milanaik joined Bridge in November of 2018 and is responsible for all aspects of the underwriting process for development opportunities. In addition to the underwriting process, Connor is involved in acquisitions, due diligence, lease analysis, coordinating debt financing, and the disposition process.

Prior to joining Bridge, Connor was a Mortgage Financing Associate at HFF, LP. During his time at HFF, LP, Connor worked on a variety of product types including industrial, multifamily, office, and retail with different mortgage requirements. Connor is a graduate of Villanova University where he holds Bachelor of Business Administration degrees in Finance and Real Estate. He is also a member of NAIOP (National Association of Industrial and Office Professionals).

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Lasser Hochman, LLC

Michael J. Donnelly, Esq.

Michael J. Donnelly has over 20 years of experience in the area of property tax and tax exemption matters. He has been with Lasser Hochman, LLC for over eleven years. Prior to that he spent over nine years with McCarter & English as an associate in the tax appeal department. Mr. Donnelly served as a law clerk to the Honorable Joseph C. Small, Judge of the Tax Court during the 1999-2000 court year.

Education

University of Scranton, B.S. Accounting
Widener University Law School, J.D.

Bar Admission

New Jersey (1999)
New York (2000)

Memberships & Affiliations

New Jersey State Bar Association
New Jersey Society of CPA's (inactive)

About Lasser Hochman

Lasser Hochman has been successfully handling property tax appeals for nearly 50 years. Our expertise has long been recognized throughout the state, as Larry Lasser was the first Judge appointed to the Tax Court of New Jersey, and also its first Presiding Judge from 1979 to 1994. Contemporaneous with Judge Lasser's retirement, Harold Kuskin, another partner of the Firm, was appointed to the New Jersey Tax Court where he served until his retirement in 2009.

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BIOGRAPHY AND PROFESSIONAL QUALIFICATIONS: MICHAEL J. CACCAVELLI, ESQ.

Michael J. Caccavelli joined the law firm of Pearlman & Miranda, LLC in June of 2018. Mr. Caccavelli's practice encompasses all aspects of local property taxation and he has extensive experience litigating complex real estate tax appeal cases involving office complexes, hotels, manufacturing facilities, general industrial and warehouse properties, power generation plants, regional malls, retail centers, warehouses, apartment complexes, data centers, condominiums and golf courses.

A significant part of Mr. Caccavelli's practice is dedicated to representing and advising clients on all aspects of redevelopment projects. In that regard, Mr. Caccavelli has guided clients through redevelopment processes from preliminary investigations to redevelopment area designations. Additionally, he has been an integral part in the preparation and passage of redevelopment plans and the negotiation and drafting of redevelopment agreements. Also, he has secured long and short term tax abatement agreements (also known as payment in lieu of tax or "PILOT" agreements) for such redevelopment projects and assisted clients with urban enterprise zone qualification issues. Mr. Caccavelli is actively involved in this developing area of the law and has assisted in drafting legislation amending the Long Term Tax Exemption Law and the Redevelopment Area Bond Law.

Mr. Caccavelli also has particular expertise with respect to casino property tax appeals, having served as lead trial counsel for the municipality of Atlantic City in a real estate tax appeal filed by the Sands Casino Hotel, which was the first published case in the nation to comprehensively address casino valuation.

Mr. Caccavelli regularly counsels and advises clients, including developers, institutional owners and lenders, on the real property tax implications of the purchase and sale of real estate, which includes providing real property tax projections as part of deal due diligence. Mr. Caccavelli has also handled a multitude of property tax exemption matters involving religious, educational, charitable, hospital, assisted living and nursing home exemption issues as well as farmland assessment and farmland roll-back tax issues. Mr. Caccavelli's redevelopment practice is complemented by his experience in eminent domain and condemnation matters; he has represented both private and public clients in all phases of condemnation proceedings from the initial project planning stage through trial and appeal. Of note, Mr. Caccavelli coordinated a right-of-way acquisition for the New Jersey Turnpike Authority's Interchanges 6-9 Widening Program in which the Authority acquired more than 320 properties to facilitate expansion of the roadway for a distance of 35 miles.

Mr. Caccavelli received his B.A. in English Literature *summa cum laude* from Boston University in 1993. He graduated from the Washington College of Law at The American University in 1996, where he was a member of the Administrative Law Journal. At the Journal, he published an article examining NLRB experimental regulation permitting ALJ's to dispense with briefs and issue bench decisions at oral argument

in fair labor practices hearings. Following law school, Mr. Caccavelli clerked for the Hon. Michael A. Andrew, Presiding Judge of the Tax Court of New Jersey and subsequently worked as an Associate in the local property tax group at McCarter & English, LLP. Mr. Caccavelli also served as a member of the New Jersey Supreme Court Committee on the Tax Court from 2004-2014, which Committee is charged with developing, modifying and amending the Court Rules governing practice before the Tax Court of New Jersey. Most recently, Mr. Caccavelli was a partner in the real estate tax boutique law firm of Zipp, Tannenbaum & Caccavelli, LLC from 2011 to 2018.

Bar Admissions:

New Jersey (1997)

United States District Court for the District of New Jersey (1997)

Representative Reported Cases:

City of Atlantic City v. Ace Gaming, LLC, 23 N.J. Tax 70 (Tax 2006).

Center For Molecular Medicine and Immunology v. Township of Belleville, 357 N.J. Super. 41 (App. Div. 2003).

AHS Hosp. Corp. v. Town of Morristown, 25 N.J. Tax 374 (Tax 2010).

Mesivta Ohr Torah of Lakewood v. Township of Lakewood, 24 N.J. Tax 314 (Tax 2008).

County of Essex v. Rubin, 2011 WL 2496222 (App. Div. 2011).

New Jersey Turnpike Authority v. Witt, 2010 WL 2795077 (App. Div. 2010).

Vision Mortg. Corp., Inc. v. Patricia J. Chiapperini, Inc., 156 N.J. 580 (1999).

1145 Towbin Ave., LLC v. Lakewood Tp., 2012 WL 4465371 (N.J. Tax 2012)

ARE-279 Princeton Rd. v. Twp. of E. Windsor, 2016 WL 2604839 (N.J. Tax 2016)

Representative Transactional Matters

Obtained Long Term Tax Exemption for 655 MW gas-fired power plant developed in Newark, NJ.

Secured Redevelopment Agreement and PILOT for 206,500 SF warehouse in Carteret, NJ.

Negotiated Long Term Tax Exemption for 539,000 distribution warehouse in Elizabeth, NJ.

Procured a 30 year PILOT for a construction of a new 540 MW power plant in Sewaren section of Woodbridge, NJ.

Re-negotiated PILOT to reduce annual payment to municipality by nearly 50% on 285,000 SF retail center.

Reduced annual PILOT on 225 MW coal-fired power plant from $1.96M to $650,000.

Worked with Prologis in its local property tax due diligence for its $5.9M acquisition of KTR Realty and its 60M SF of industrial distribution buildings.

Served as lead counsel to the NY Red Bulls in the negotiation and implementation of a settlement transaction resolving litigation pending in the New Jersey Supreme Court concerning the tax exempt status of Red Bull

Stadium in Harrison, New Jersey. The transaction facilitated prospective property tax exemption for the stadium and implementation of a PILOT via the use of the County Improvement Authorities Law enabling the client to achieve substantial prospective annual property tax savings.

Obtained settlement via litigation concerning a host benefit agreement between the owner of a coal-fired power plant and the host municipality, Carneys Point Township, NJ. Settlement achieved termination of the agreement ten years prior to scheduled expiration date there by eliminating $75.8M in scheduled payment obligations to the host municipality. The settlement also saved the owner, an entity controlled by Ares Management, LLC Infrastructure and Power, an additional $8.8M via reduced current payment obligations for a total savings to the client of about $84.6M. Moreover, the elimination of the $75.8M post PPA termination payment obligations enabled ARES to conclude a sale of the asset to a third party at favorable terms.

Assisted Duke Realty Corp. to analyze and evaluate the real estate tax obligations and implications of its purchase of the entire New Jersey portfolio of Bridge Development Partners, LLC consisting of more than 2.2M SF of newly developed industrial warehouse distribution centers and two future development sites. Further served as lead counsel to Duke Realty Corp. with regard to the perfection, approval and transfer of existing PILOT and Redevelopment Agreements for numerous properties in the portfolio.

Consulted with Prologis on local property tax and PILOTs issues with regard to its $8.5B purchase of DTR Industrial Trust.

Served as local property tax consultant with respect to the sale of more than $1.1B in RAB Bonds to partially finance construction of Triple Five Group's American Dream Project in which Goldman Sachs serves as lead underwriter. Currently serve as property tax consultant to the RAB Bond Assistance Agent, Trimont Real Estate Advisors with respect to ongoing administration of the $1.1B RAB Bonds.

Negotiated reduction in tax assessment of the defunct Newark Bears minor league baseball stadium from in excess of $60M to $17M for the new owner who plans to redevelop the site.

Negotiated reduction of more than $7.2M of the real state tax assessment for Hudson Transmission Partners transformer facility located in Ridgefield, New Jersey.

Obtained 22 year RAB PILOT and $2.8M in RAB Bonds for a 1.3M SF industrial redevelopment of the former Gerdau Steel plant in Perth Amboy, New Jersey.

Currently serving as lead local property tax and redevelopment counsel for Bridge Development Partners for its Bridge Point 78 project to redevelop the former Ingersoll Rand manufacturing facility in Phillipsburg, New Jersey with over 2.5M SF of modern state of the art industrial buildings.